SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 41st PARLIAMENT • VOLUME 148 • NUMBER 41

OFFICIAL REPORT
(HANSARD)

Tuesday, December 13, 2011

The Honourable NOËL A. KINSELLA
Speaker

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Publications Centre: David Reeves, National Press Building, Room 926, Tel. 613-947-0609

Published by the Senate
Available from PWGSC – Publishing and Depository Services, Ottawa, Ontario K1A 0S5.
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Tuesday, December 13, 2011

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

[*Translation*]

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw to your attention the presence in the gallery of Jacques Chagnon, Speaker of the National Assembly of Quebec.

On behalf of all senators, I welcome you to the Senate of Canada.

[*English*]

SENATORS' STATEMENTS

TRIBUTES

THE HONOURABLE TOMMY BANKS

The Hon. the Speaker: Honourable senators, I have received a notice from the Leader of the Government in the Senate, who requests, pursuant to rule 22(10), that the time provided for consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Senator Tommy Banks, who will be retiring from the Senate on December 17, 2011. I remind senators that pursuant to our rules, each senator will be allowed only three minutes and they may speak only once.

However, is it agreed that we continue our tributes to Senator Banks under Senators' Statements?

Hon. Senators: Agreed.

The Hon. the Speaker: We will, therefore, have the balance of the 30 minutes for tributes, not including the time allotted for Senator Banks to respond. Any time remaining after tributes will be used for other Senators' Statements, if there is agreement of the house on that.

Hon. Senators: Agreed.

The Hon. the Speaker: So ordered.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, Prime Minister Chrétien surprised many Canadians with the appointment of Tommy Banks to the Senate. Tommy was a Canadian legend, a jazz musician who had played with hundreds of the great musicians of our time, conducted just about every major professional orchestra across Canada, composed, recorded, and was known from coast to coast, and beyond, as the host of "The Tommy Banks Show" from Edmonton.

Incidentally, Tommy's status as a Canadian icon became entrenched when on his show he challenged Wayne Gretzky to a game of table hockey and tied. I do not know anyone else in this chamber who could have stopped The Great One from winning a hockey game, even if it was on a table. Senator Mahovlich, perhaps, but I doubt that many of the rest of us would have even had the temerity to make the suggestion — and live, on national television.

Perhaps we should have realized from the very beginning that there is not much that Tommy Banks cannot do, and certainly he has demonstrated that here. He has been an indefatigable member of a large number of Senate committees, including National Finance; Banking, Trade and Commerce; National Security and Defence; and Aboriginal Peoples. For many years, Senator Banks served as chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, and recently as chair of the Subcommittee on Veterans Affairs of the Standing Senate Committee on National Security and Defence. He has sponsored bills dealing with species at risk, the bill that established the Department of Public Safety and Emergency Preparedness, and authored the Statutes Repeal Act, one of the rare Senate private member's bills that passed into law and indeed was passed unanimously by the House of Commons.

His ability to cut to the heart of an issue; to articulate an argument or question with passion, conviction and extraordinary rigour of intellectual analysis; always upholding the endgame of strengthening our Canadian democracy and parliamentary traditions — these qualities, and so many others, have made Senator Banks an exemplar of the best this chamber can be.

I cannot help but think that the passion our colleague displayed in his chosen field of music over the decades gave him an unusual head start when he was summoned here to the chamber. Wynton Marsalis once said that there is nothing like jazz that "will ever so perfectly capture the democratic process in sound. Jazz means working things out musically with other people. You have to listen to other musicians and play with them even if you don't agree with what they're playing."

Whether or not he agreed with what was being proposed in the Senate, Senator Banks was always prepared to play. He was always prepared to play his part in the orchestra that is the Senate as an engaged and thoughtful parliamentarian.

Since coming to this chamber, Tommy Banks has continued to advocate strongly and passionately for the things he believes in, including a responsible, forward-looking environmental and energy policy; safe drinking water for First Nations; a policy of

what he has called the "three Cs" — careful Canadian control of our banking system through balanced regulation. Senator Banks also stressed the critical importance of the arts and cultural industry to Canada and of course was relentless in representing the interests of his beloved Edmonton. Senator Banks is known as "Mr. Edmonton," and none of us who have heard him speak about his adopted home city can have any doubt about how apt that title is.

Honourable senators, across all these issues, all the many, varied things that Senator Tommy Banks has done, musically and politically, one thing shines through as a unifying force: a deep love and respect for Canada — our traditions, our future, what grounds us and what we can become. It is what radiated from his television show; it is what audiences feel when they hear him perform; and it is what we have all witnessed whenever he rose and spoke in this chamber.

I will conclude with a final jazz quote, this time from Herbie Hancock, who once said: "Life is not about finding our limitations; it's about finding our infinity." I cannot think of a better way to sum up the career, so far, of my friend and colleague Tommy Banks.

Tommy, we will miss you very much. You once said that musicians never stop playing. I certainly hope that is true and that, following from what Wynton Marsalis said, the jazz musician in you never stops playing in the political realm either.

I know your wife, Ida, is here with you today in the gallery. Our very best wishes go out to you both as you enter this next stage of your life.

Hon. W. David Angus: Honourable senators, it is with a great deal of enthusiasm, deep respect and genuine fondness that I rise today to say a few words about our truly remarkable friend and colleague, Senator Tommy Banks.

• (1410)

One of the indisputable characteristics of this place is that you meet a lot of nice, special and often famous Canadian people. You get to know them as colleagues and friends, working together in our ongoing effort to make Canada a better place. You get to know them in a way that you do not read about in the newspapers or hear about on the radio or television. You get to know their human qualities, their idiosyncrasies, their sensibilities and their value systems. Honourable senators, a classic example of such a senator is Thomas Benjamin, Tommy, Banks.

When Tommy arrived here with his long, flowing white hair, these locks that travelled down the back of his neck in the spring of 2000, he was already a well-known household name in every region of our country. He was, by then, what various authors have characterized, and justifiably, as a true Canadian icon, a living musical legend. Tommy's enormous talents as a musician have been wonderfully expressed in a myriad of ways: as a composer, arranger, concert pianist, orchestra conductor, band leader, big band, small band, trio, quartet — you name it — jazz musician and radio and TV personality.

You have already been told about "The Tommy Banks Show," which he hosted with such alacrity for some 5 years, from 1968 to 1973.

I was told that Tommy Banks was a Conservative — or was it a Progressive Conservative — even though he was appointed by the Right Honourable Jean Chrétien. I was really surprised, after his swearing in here in this chamber, to see Senator Banks take his place on the Liberal government benches. My surprise, of course, was enhanced by the knowledge of the many federal appointments he had received during the period 1984 to 1993, during the wonderful government of the great Brian Mulroney.

I might say these were appointments which he received graciously and performed admirably, in fact in a marvellous fashion, especially in the culture and arts domain, for which he has long been an ardent champion and articulate advocate.

As I came to know Tommy Banks better as we worked together on the Standing Senate Committee on Energy, the Environment and Natural Resources — he preceded me there as chair and served three full times as chair before me — I learned a lot of funny things about him: great things, really.

The other day in Edmonton, when we were holding hearings in Tommy's favourite city, he had gone home not feeling well and we passed this street named Tommy Banks Way. I said, "What is that?" That is named after our colleague, and he is not feeling well today. I thought later, Tommy Banks has a way about him. What is the "Tommy Banks way?" I put it to you, honourable senators, that the "Tommy Banks way" is a musical way, a rhythmic way, a gentlemanly way, an educated way, a passionate way, a determined way, a diligent way and a sensitive way. It is also an imaginative, happy way and a very humorous way. Most of all, honourable senators — and most important, I say — is that the "Tommy Banks way" is a principled way and a Canadian way. God bless Tommy for that.

I have to share with you two other things. I could go on and on; the guy is unbelievable, as we all know. When I got on the committee and Senator Banks was the chair, there would be a witness or someone he was trying to explain something to, and he would say things like, "The water comes up and is held up by the dam, but occasionally it 'blub-blub-blub-blubs' over the dam." Or sometimes he would say "This mercury is in the atmosphere and it goes 'zzt-zzt-zzt-zzt' and gets out of the atmosphere." Other times, "When you are looking to see what the oil sands produce out of the bitumen, it goes 'uuj-uuj-uuj' and it just oozes out. Tommy Banks has this rhythmic and musical way of saying things. I always thought it was a fabulous thing.

I also asked Tommy about his family. We were in Vienna one time and Tommy wanted us to meet the leaders of the OPEC, and there was a lady there. I said, "Who is that?" He said, "That is my wife." I said, "That is your wife?" "What is her name?" He sang:

> Ida! Sweet as apple cider,
> Sweeter than all I know,
> Come out! In the silv'ry moonlight . . .

And so on, in Frank Sinatra's great words:

> Of love we'll whisper, so soft and low!
> Seems as tho' can't live without you,
> Listen, please, honey do!
> Ida! I idolize yer
> I love you, Ida, 'deed I do.

Tommy, I understand they have asked you what you will do in your retirement. You said, "Heck, I don't know, but one thing you should know is musicians never stop playing." Let the music play and God bless you. Have a great retirement.

Hon. Joseph A. Day: Honourable senators, I join with other honourable senators in paying tribute to our colleague and friend, the Honourable Senator Tommy Banks, who will be retiring from the Senate this weekend.

I did not know him prior to arriving here, but I did know of him, as most Canadians did, from his work as a musician, musical director and television personality. As new senators, we were appointed at approximately the same time. We shared a lot of ideas and experiences, searched through the *Rules of the Senate* to find out which rule applied in a particular instance as we were learning our way in this new environment. We served together on the newly formed Standing Senate Committee on National Security and Defence with Senator Kenny, a committee that was particularly active and effective in those early days.

In the time I spent here in the Senate with Senator Banks, I have come to realize what I suspect most of us here in the chamber do, that he embodies that which the Senate is intended to be: a place where one's motivation is to act in the best interests of the country and its people, above all other considerations.

An accomplished pianist, conductor, arranger, composer and television personality, Tommy Banks did not take the typical route to the Red Chamber. Though this may have been his greatest asset, Tommy brought to the Senate his experience as a CBC television personality, an entertainment business person, the founding chair of the Alberta Foundation for the Arts, a member of the board of the Canada Council for the Arts, having been appointed by the Right Honourable Brian Mulroney, and a member of the Sectoral Advisory Groups on International Trade of NAFTA, the North American Free Trade Agreement, to which he was appointed by the Honourable Michael Wilson.

In this chamber and in committee, Senator Banks, time and time again, has proven his mettle in helping us to reach consensus and in helping us choose just the right words to make our point in a report.

I was fortunate enough to travel to Afghanistan with Senator Banks on the Standing Senate Committee on National Security and Defence, as well as, over time, to most of the military bases across Canada. One could only admire the genuine concern for the Canadian soldiers and their families that he displayed.

While I have already touched on Senator Banks' musical career, I would be remiss were I not to mention one of his greatest musical accomplishments: that of playing the piano as part of the Singing Senators. Tommy's musical genius will surely be missed by both the Singing Senators and, in particular, our audiences. I fear for the future of the Singing Senators without his guidance and leadership. However, the Singing Senators have not been asked to join him as he moves back to his musical career, so we may only hope that from time to time he will return to perform as a special guest of our group.

There is little doubt that Tommy Banks will be missed in this chamber. The level of decorum, wit and genuine intelligence and compassion he has displayed in his time here will not be easily replaced. We owe it to him and to Canada to perpetrate that legacy.

• (1420)

Sincere best wishes, Tommy and Ida, as you embark on the next phase of your journey.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, the senators who spoke mentioned two important committees on which Senator Banks served over the course of his career.

I would like to speak to you about a third committee that receives only a brief mention in his biography; however, the work he did on that committee is still very important in the hearts and minds of many Canadians: the Special Senate Committee on Illegal Drugs.

I did not know Senator Banks personally before he arrived in the Senate in April 2000, and some of us were thinking about the membership of this committee, on which only five senators would serve. Senator Tommy Banks was quickly identified by his Liberal colleagues as an appropriate candidate to participate in the work of this committee, along with myself and several others, including Senator Kenny.

At the first meeting, Senator Banks immediately put forward the following hypothesis: dear friends, we are undertaking committee work that could shake the pillars of the temple of Canada, if not the world. Just like all Canadians, we have our own opinions on this subject. Yet I hope that all of us will keep those opinions to ourselves so that we can learn from our witnesses.

In other words, let us set aside our prejudices and focus on the evidence. That was one of the first sentences I heard from my illustrious colleague Senator Banks, who later became my friend. His words struck me because I already had an opinion but I had to admit that we did indeed have to set aside our prejudices and focus on the evidence.

Honourable senators, in May 2002, we had finished hearing from more than 300 witnesses in committee. We had received more than 20 research documents from the Library of Parliament and we started writing our report. I wrote a large part of this report in French, with the researchers. Over the course of writing the many chapters of a report that would end up being about 900 pages, it was never a question of whether we would wait until the very end to submit an English translation to Senator Banks and Senator Kenny. We decided to give them English copies of

the report as the chapters were completed. After we had written two or three chapters, we got together to ensure that any changes were made, if necessary, otherwise we would continue.

Senator Banks discovered the language of Molière while going through this report. I must say that for a gentleman from Edmonton, it was not always easy to pick up on nuances — and we had put in a lot of nuances in the language of Molière — but nevertheless, I think that the English translation rendered the meaning, and thanks to Senator Banks, we were able to produce an appropriate text in both French and English.

I would like to thank Senator Banks for the work he did with me during our time in committee. Yes, we shook the temple pillars — not just here in Canada, but around the world. This document is still being read and re-read by many governments and parliamentarians around the world because he added the hints of Shakespeare that were needed to ensure that we had two appropriate versions, in both of Canada's official languages.

I thank him for this work and wish him good luck in his exciting future endeavours.

[*English*]

Hon. Grant Mitchell: Honourable senators, I have been dreading the inexorable advance toward the retirement and departure of Senator Banks for a long time. Senator Banks made a remarkable contribution to the work of the Senate, of course, and to the lives of Albertans and Canadians. He has been an absolutely delightful colleague in every way. I became very aware very quickly after arriving here of how much I would miss him — all of us would miss him — when he left.

Being from Edmonton, for most of my life I have had a clear impression of Tommy Banks as a great musician. I certainly respected and admired him as a musician and as an enduring celebrity as I was growing up in Edmonton. I have always believed anyone who is really good at jazz must be very, very smart because this is a complex language that must be expressed intuitively to be at its best, and Tommy Banks knows this language intimately. In fact, he is fluently bilingual.

I met Murray McLauchlan several years ago and proudly told him that I worked with Senator Banks. This launched Mr. McLauchlan, a Canadian icon in his own right, of course, into a wonderful and animated description of his many fond memories of working with Senator Banks on various music projects, his obvious admiration for him and his genuine interest in how he was doing. When I think of that encounter, I can see myself and so many other colleagues, fans and friends launching into exactly the same kind of spontaneous explanation of how much we admire him and of how fond we are of him.

To play music at the level he has played music and to sustain his kind of creativity and energy for it over all these many years truly requires a certain genius, a genius that I believe has been equally apparent in his career as a senator. Senator Banks took so many of those attributes that made him great in his first career — a keen intelligence, a disciplined mind, compassion, passion and, of course, an ability to perform — and he transformed himself seamlessly into a skilled and respected senator, advocate and leader in the public policy arena in Canada.

It never ceases to amaze me how quickly he grasps a new issue, sees something in it that no one else has seen, expresses the essence of the matter and proposes a solution. He always inspires me with his profound empathy for people and the human condition, with his courage and integrity and with his passionate advocacy for what he believes to be right for his community of Edmonton, the environment, the military, the arts, the farmers, Canada and Alberta.

I am very sad about having to say goodbye to Tommy Banks. He is irreplaceable, and he will be truly missed.

Hon. Mobina S. B. Jaffer: Honourable senators, I, too, join other senators today to pay tribute to an amazing person: Senator Banks. Many Canadians know that Senator Banks is a well-renowned jazz musician. We here in the Senate appreciate Senator Banks' musical talent.

Many Canadians know of Senator Banks' hard work in the Senate. We here in the Senate appreciate Senator Banks' hard work.

Many Canadians know of Senator Banks' wisdom. We here in the Senate appreciate Senator Banks' wisdom.

Thank you, Senator Banks, for your hard work.

Senator Banks, I want to thank you for all the support that you have given me, especially in the last few months while I have been struggling to handle the loss of my mother.

Senator Banks, I want you to know I will truly miss you, as I always knew that you would stand up and voice your opinion in debates. You would voice your opinion even if you were the only one with a certain point of view.

You, Senator Banks, would voice your opinion, even if you knew that there were only a few who would support your point of view.

Most of all, you would not voice your opinion if we were all of the same view, including yourself, to give some of us a chance to speak and shine.

Senator Banks, we and I certainly will miss your courage in the chamber, in the Senate. Thank you for your leadership.

• (1430)

Hon. Joyce Fairbairn: Honourable senators, today I would like to say a few words about my dear friend and colleague, Senator Tommy Banks, and also his family.

I first became aware of Tommy Banks in September of 1957. I had just ridden the bus from Lethbridge, Alberta, down in the south, to start the next phase of my life as a student at the

University of Alberta in Edmonton. A good friend to many of us here, a young man named Joe Clark, was heading off from his hometown of High River to get there too, with the same interest that I also had.

There we were. We were rocked that night because Tommy Banks was there at the university with his orchestra. It was for all the younger people coming in for Frosh Week. Those were the days, honourable senators, when everybody was up and dancing. It was terrific. We rocked and rolled all that night, and I have been a huge fan ever since.

I had the honour of watching Tommy perform again 54 years later in my hometown of Lethbridge this past June. He came there and the whole city was there. As I said to him earlier today, keep on moving because they are all waiting.

Honourable senators, Tommy Banks has made a tremendous contribution to the people of Canada. He has travelled to so many different countries, served on a number of Senate committees and caucuses, and has been a great representative for our beautiful province of Alberta.

I must say, beside his music and his smile, what I admire the most in our friend Tommy is his dedication to improving the lives of others. He does his best to give people at every level a fair chance.

Tommy, you have been a wonderful friend to me and you will be missed by all of us here — I know it — who have had the pleasure of working with you.

All the best to you and Ida for many years of happiness, as always. I will see you again; you cannot even shut the door. I will see you again in Edmonton — and you have promised already to come back to where the mountains are, down in Lethbridge. God bless you.

Hon. Gerry St. Germain: Honourable senators, it is an honour to stand and pay tribute to Senator Tommy Banks.

I never agreed much with what Prime Minister Chrétien did over the years, but I will agree on one thing: He did make a good appointment when he appointed the Tommy Banks to the Senate. I think we have to give credit where credit is due. I get excited about a bunch of things. I was pleased and am still pleased.

I will not be repetitious, Tommy, because it has never been one of my traits. However, you are that musical legend — that is what I remember you as. Growing up in Manitoba, I think I heard your name when you were really young.

Senator Banks: We were both young then.

Senator St. Germain: That is right, because I am following you out the door next year.

Honourable senators, a perfectionist, he is; articulate, without question; a devil for details. I can recall sitting in a hotel room at two o'clock in the morning, when he, Senator Moore, Senator Kenny and someone else were arguing over a grammatical situation in a report that was being drafted for Standing Senate Committee on National Security and Defence. When it got down to a comma, I said, "Okay, guys, I am going to bed. It is 2:30 in the morning, and I am out of here."

"Tommy the Tory" sounds a heck of a lot better than "Tommy the Grit," do you not think? In your next life, do some serious thinking about accepting these appointments. Do not always grab the first one; the second one might be just as good.

Really, Tommy, I want to thank you. You always supported me. You came to events in Vancouver whenever called upon. We did a fundraiser for charity for the Zajac Foundation and you were there. You performed as you always do, with that articulate, perfect detail.

I want to thank your family for sharing you with us here, because I know the sacrifice they have made for you to be here.

I will close by saying that you are a legend in my mind as a good friend and a great human being. God bless you.

[*Translation*]

Hon. Roméo Antonius Dallaire: Honourable senators, although his first name — Tommy — may sound ordinary, this man has always demonstrated tremendous dignity and was always one of this institution's true gentlemen. I would like to illustrate my point with two quotations from another famous individual, someone who has also influenced people, in his own way.

[*English*]

This quote is from Winston Churchill, which I know some colleagues on the other side enjoy quoting. I decided to take it out of this book called *The Wicked Wit of Winston Churchill*. In there, for this occasion, I read:

> No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.

Churchill uttered these words in a speech to the House of Commons in November 1947. He had, by then, seen all those other forms of government.

It brings me to the great democrat that you are. I find this quote may be interesting for you. It states:

> Asked what qualities a politician required, Churchill replied, "The ability to foretell what is going to happen tomorrow, next week, next month, and next year. And to have the ability afterwards to explain why it didn't happen."

[*Translation*]

My dear colleague, you have been a mentor for me. I remember my first days in the Senate, when I first saw you — and I was still a young man — with your full, wavy white hair. I saw a very wise

man who helped me understand that I was a novice here, despite my years of experience within the Canadian Forces. As a novice or newcomer, I was wise to listen to my elders. You acted as my mentor, with a great deal of perseverance, patience and dignity.

I clearly remember the meal we shared, having a good steak of Western Canadian beef — even though we were here in Ottawa — during which you explained to me how the Senate works and our responsibilities as Senators. You made it very clear that we have responsibilities and not just privileges.

• (1440)

These responsibilities require hard work, often carried out behind the scenes. These responsibilities also require efforts to advance our democracy and our system of governance, and to ensure that Canadians are properly represented within the structure of our government.

Senator Banks has also demonstrated his humanity, especially by working with soldiers and their families. It is often easy to develop policies, establish directives and draft reports that contain big words and big plans.

But it is becoming increasingly rare to see men of Senator Banks' calibre and reputation, who are still able to humanize this work and remain humble with their colleagues.

Senator Banks, your humility is commendable and it is the reason you were so well liked in your work as a senator, particularly by soldiers and their families.

We thank you and wish you good luck and good health.

[*English*]

Hon. David Tkachuk: Honourable senators, I never really got along that well with Tommy, actually. We were on a couple of committees together and we always fought like you would not believe. I think the Banking Committee was the only one where Tommy and I actually saw eye to eye on a lot of issues; the National Security and Defence Committee, not so much. On a number of other committees, as some of you know, we had a few problems.

I have known Tommy longer than most of you, probably, because I first met him in the early 1970s. I was in the rock 'n' roll business. To see how the business should be run, I met with Tommy Banks, who had by that time quite a reputation for managing bands. That is the business I was in in Saskatchewan; I was a bit of a neophyte. I went to discuss the business with him and he was quite a teacher.

I never saw the guy again until he was appointed here as a Liberal senator. Most of you probably do not have an album by Tommy Banks, but I do. I bought one in the 1970s. Many of you may not know that he married Procol Harum and the Edmonton Symphony Orchestra and put together a wonderful rock album, which is still one of my favourites. I cannot stand listening to it because every time I do I think of Tommy, the Liberal, here; but I like the album. It is one of the few vinyl albums that I still keep. There are CDs and all the different modes of music, but I like to listen to many albums in vinyl alone and one of them is Tommy Banks' album with Procol Harum. I like all the songs on the album. I particularly like "Conquistador," "A Salty Dog" and "A Whiter Shade of Pale." Tommy, that is a great album.

You were always a gentleman here. Even though we have had our differences, I will miss your intercessions — not all of them, mind you, but I will miss the really good ones. Good luck.

Honourable senators, buy a couple of his albums; he will need the money when leaves here.

Hon. Jim Munson: Honourable senators, it is a pleasure to have this opportunity to pay tribute to Senator Tommy Banks, who is, himself, a tribute to the Senate of Canada.

Where else could a person who has enjoyed a long, rich career in the world of arts and culture as a musician, conductor, advocate for the arts and a television personality be appointed to help shape this nation's policies and laws?

Senator Banks is a living, breathing example of what is great and distinct about this place, of why this place matters. He is a self-made man; he is an independent, conscientious thinker who takes issues seriously.

He is a modern man who respects the important traditions of Parliament. Carrying out my duties as Opposition Whip, I have always appreciated Senator Banks' commitment to the work that we do in this chamber and in committee rooms. He always answers the call to sit in and fill in. Thank you, Tommy, for making my job easier.

When Senator Banks walks into a room, including this room, you know it. He arrives ready to participate, a knowledgeable and skilled wordsmith. He uses language to great effect in debates and discussions. He makes his points the way points should be made — with compassion, conviction and a genuine willingness to collaborate. When Senator Banks cares about an issue, you can be sure he will learn everything he can about it and shape his convictions accordingly.

Just look at his remarkable record as chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, as well as the acts he has sponsored over the years. It is easy to see his passion for protecting the environment. Tommy, I learned a lot from you, too, during the Defence Committee.

Above and beyond the critical dimensions of this place, what matters to Senator Banks, to Tommy, is what he believes is right, what he believes is in the interest of Canadians.

On several occasions, his words and actions have certainly inspired me to earnestly consider the impact of policies and laws on our society. Right here in the Senate is where this kind of reflection needs to happen.

Senator Banks, in closing, I am grateful for your huge contribution to the Senate and the people we serve. I look forward to hearing about the great things you will do after your retirement. I know you will continue advocating for music

programs in schools and that Canadian children will benefit in all sorts of ways from your efforts. I also know that there will be some great music projects in the future. You can bet, Tommy, that I will be keeping my ears open. Rock on!

Hon. Pierre De Bané: Honourable senators, I would like also to pay tribute to a man that I admire profoundly, Senator Tom Banks. He has served in the Senate for 11 years. Before that, he enjoyed a career as an international musician that spanned over 50 years.

After studying the piano as a child, playing in jazz saxophonist Don Thompson's band at the age of 14, Senator Banks went on to work closely with the Edmonton Symphony Orchestra, the Montreal Symphony Orchestra and the Hamilton Philharmonic Orchestra, where he played alongside the likes of Aretha Franklin and Tom Jones.

As Senator Tkachuk has said, his contribution to music, to composing and playing music and to managing musicians, was something very important.

In 1967, he led a jazz quintet at Expo 67. He served as music director for ceremonies at the 1978 Commonwealth Games and the 1983 World University Games in Edmonton, as well as the opening of Expo 86 and for the opening and closing ceremonies at the Calgary Winter Olympics in 1988.

Incidentally, he was born in Calgary, even if his profession was mostly in Edmonton.

Of course, Senator Banks spent an important part of his career in television, radio and film.

In addition to his musical accomplishments, he was a strong voice for the arts in Canada. He has worked with the Canada Council for the Arts and the Alberta Foundation for the Arts. He has also received the Order of Canada, the Alberta Order of Excellence, and Juno and Gemini awards, and even has a street named after him, as Senator Angus has reminded us.

• (1450)

Following an incredible 50-year career as an international musician, he was appointed to the Senate, where he has been serving for 12 years.

[*Translation*]

Over the years, he has showed deep respect for Parliament. He often set aside partisanship in the name of a job well done. Unwavering attachment to one's own values is an essential quality that every great parliamentarian must possess.

Senator Banks accomplished exemplary work in many committees: energy, national security, finance. He also won a rare victory on Parliament Hill in getting a bill passed. This happens very rarely, but his bill was passed: if legislation is not enacted within 10 years, it becomes obsolete.

In this short speech, I have only scratched the surface of our colleague's many accomplishments. What a career! We have always been impressed by the level of his thinking. We have no idea what else the senator has in store for us, but we are sure that the people of Edmonton are pleased to welcome home one of this country's great musicians.

[*English*]

To you, senator, and to your beloved wife, our best wishes.

Hon. Percy E. Downe: Honourable senators, when I worked in the Prime Minister's Office, I was tasked with cold-calling Tommy Banks to see if he was interested in being considered for an appointment to the Senate.

I must tell you that I guess I am one of the few people in here who had never heard of Tommy Banks. Perhaps in my family on the East Coast we had Don Messer on the television all the time instead of Tommy Banks' show. I looked at the CV and I thought the Senate is a chamber where they review legislation and bills and I am looking at a jazz musician. I was thinking this could be a problem. Senator LeBreton would well know that when appointments go well everyone has spoken to the Prime Minister and recommended the person; when appointments go badly, the person in the Prime Minister's Office is asked how they ever talked the Prime Minister into that appointment. With some fear and trepidation I called Mr. Banks to see if he was interested in being considered. After a few minutes of comments on my part, he said all the right things, very much appreciated the call and the consideration.

He went on to explain, "If you are looking for a partisan, I am not your guy," and he mentioned some of the areas where he disagreed with policies of the Liberal Party over the last number of decades, to the point where I wondered if he ever supported the Liberal Party. We concluded the conversation nicely, and a week later a detailed letter arrived, outlining Mr. Banks' concern that the Prime Minister fully understood some of the problems he had had in the past with various Liberal Party policies. I recall a long part of the letter was on the National Energy Program and other concerns. When I showed this to the Prime Minister he thought it was a well-written letter, and I agreed. Just reading that letter changed my opinion of musicians. It was so well written. The Prime Minister said, "Just the type of person we want in the Canadian Senate: an independent, clear thinking, smart Canadian." He appointed him.

Given Tom's early precarious position as a member of the Liberal Senate, I have a small token for him to take when he leaves here. He can keep it on his book case for many years.

Hon. Senators: Hear, hear!

Hon. Wilfred P. Moore: Honourable senators, I wish to be associated with the remarks of my colleagues here today with regard to my seatmate, the Honourable Tommy Banks, who is anything but retiring.

Tommy, I have deepest respect for your high intelligence, your high degree of participation and involvement here in the Senate, your wonderful sense of humour and your generous sharing of your musical talents on behalf of the arts and other community causes.

Without repeating all that has been said here today, whether it has been flying in a Black Hawk helicopter gunship outside the wire in Afghanistan, watching the stage performance of *Guys and Dolls* in London, enjoying your talents as you sang at a friend's piano in Oakland, Lunenburg County, Nova Scotia, or socializing over supper with you and Ida, it has been a gas. I really shall miss you. I wish you, Ida and your family all the best. I will be out to see you in Edmonton. Thank you, Tommy.

Hon. Jane Cordy: Honourable senators, I also rise to acknowledge Tommy Banks' contribution to Albertans, to Canadians and as a member of the Senate.

We were both appointed to the Senate in the spring of 2000, and we both served for several those early years on the newly reconstituted Standing Senate Committee on National Security and Defence. At that time, under the chair of Senator Kenny, the Defence Committee published some outstanding reports due to no small effort that Senator Banks did on the committee.

The level of the debate is always elevated with Senator Banks in this chamber. Whether you agree with his arguments, Senator Banks always presents reasoned arguments to debate in this chamber in a most articulate way. His intelligent and articulate discourse carried over to his work in the Senate committees, whether questioning witnesses or debating amendments to bills. That is the way the Senate should work.

Tommy, you have a natural curiosity and an inquiring mind, you listen well in the chamber and committees, and you ask in depth questions with a focus on the important aspects of an issue. I feel like I am back in school writing a report card. You were wonderful.

As an advocate for independent thought when examining bills by senators, I know that you view improving and critiquing bills — regardless of your political stripe — as a major role, and indeed the strength of an effective Senate and of an effective senator.

I also know that when the Liberals were in government you often proposed amendments to legislation or voted in favour of others' amendments. While our ministers did not always like it, that did not matter. You did what you believed was right. As you noted recently in an interview, in the last three years, no bill has been sent back to the other place from the Senate with amendments.

Tommy, you are a proud Albertan, and you have spoken of your province and your beloved Edmonton on many occasions. It has been a pleasure working with you over the past 11 years. Like others, I would like to wish you and Ida a happy retirement. As Senator Angus said earlier, musicians do not retire. They will keep on playing.

I think perhaps this will just be another new stage in your life. My best wishes to you and your family.

Hon. Vivienne Poy: Honourable senators, it is a great pleasure for me to pay tribute to the Honourable Tommy Banks, a man who has won the respect and affection of many throughout his long and varied career.

As we all know, Senator Banks is a Canadian icon, as has been mentioned repeatedly.

He had his own television show on CBC for many years, and he has had a long career as a noted jazzman, conductor and composer.

Senators appointed in recent years would not have known that here on the Hill we had the pleasure of hearing him play on the piano at the Senate fashion shows, which used to be held to raise funds for the United Way. Remember that?

Senator Banks was not a career politician. As we all know, this diversity of our members is what makes the Senate of Canada special. Many of us are here because we represent our communities and our regions, and Tommy Banks is devoted to his province of Alberta.

Because of that, he has often moved across party lines, as mentioned earlier, by using common sense to make decisions. For that reason, I knew I could depend on him to co-sponsor my bill to amend the national anthem to include all Canadians. When I reintroduced it for the second time early in the new millennium, he checked the rhythm, and it was okay.

• (1500)

Senator Banks agreed with me that since the original *O Canada*, penned by Sir Robert Stanley Weir in 1908, was inclusive of both genders, and since women were equally important in nation building, there was absolutely no reason that the later version could not be amended in the 21st century to reflect its original intent.

That was Bill S-3, introduced in October 2002, which was approved unanimously by the Social Affairs Committee, but then Parliament prorogued.

I thank Senator Banks for his support.

The fact that Austria's national anthem has just been changed to include daughters, as Australia's was many years ago, reminded me of Senator Banks. We both know that the day will come when our national anthem will include all of us.

Thank you, Tommy, for your great contributions to the Senate of Canada over many years. I wish you great happiness in your retirement. May your music continue forever.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, it is indeed an honour and a privilege to speak today to pay tribute to our dear colleague Senator Tommy Banks. Let me begin by saying what a great pleasure and honour

it has been for me to represent Alberta in this chamber with such a distinguished, eloquent and knowledgeable colleague, someone who undertook his work in the Senate with independence, determination and integrity and who always stayed true to his principles.

Many of Senator Banks' important contributions to the Senate have already been mentioned and are well documented: Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources for many years; long-time member of the Standing Senate Committee on National Security and Defence; author of the important Statutes Repeal Act; and his thoughtful work in other committees on questions that have helped shape policies in many areas, from urban to national security issues.

Since his appointment to the Senate in 2000, Senator Banks has drawn on his passion for music and his incredible wealth of experience in this domain to become an important advocate for the significant role that the arts and cultural industries play in our society. This again reflects his commitment and dedication to making Canada a better place.

What is perhaps harder to document but has made him a source of inspiration in the Senate is the integrity and independent spirit with which he has tackled issues during his parliamentary career. I have come to admire and respect Senator Banks, like so many of you, not only for his illustrious career prior to his appointment to the Senate, or for his tremendous work ethic, or for his great talent and wisdom, but also for truly embodying the spirit of this chamber as the place for sober second thought as well as independence of thought and action. These values and qualities that have guided Senator Banks' actions throughout his time in the Senate have made this chamber a much better place and have greatly contributed to advancing the public interest.

Senator Banks' contribution is now part of this institution's history for us and for future generations to study and reflect upon.

Dear Tommy, you are a wonderful person full of life and energy, a unifying force and a true gentleman. We will dearly miss the passion and the wisdom you have brought to this institution. Please accept my best wishes for happiness and health to you and Ida as well as for a life of new personal and artistic endeavours so that we continue to hear and be moved by your great talent.

Hon. Michael Duffy: Honourable senators, I want to join with my colleagues here in congratulating Senator Banks on his many, many contributions to Canada, going back beyond his decade here in the upper chamber.

Before I was appointed to this august place, several nights a week I used to have a seance with the honourable senator a couple of blocks from here, at which he educated me on the importance of an independent Senate and the role of the Senate as a counterweight and counterbalance to the other place down the hall. In the room in which we used to meet there were many journalists who thought they knew a lot about politics in this country. However, every day that we met and had a conversation, I and they learned more about Canada, its Parliament and what it means to be a Canadian. Senator Banks is a great teacher, as Senator Tkachuk has said, and a great Canadian in every sense of the word. We will miss him.

On a political note, I once accompanied him to a political gathering in a great park in Edmonton where everyone was wearing red ties. If he had been on the elected side, he would have been a rock star. Judging by the crowd that day, he would certainly have had a place on the other side. He is a magnetic, warm, intelligent and great human being, and we will miss him a lot.

All the best.

The Hon. the Speaker: Honourable senators, the 30 minutes agreed to has expired. I call upon the Honourable Senator Banks.

Hon. Tommy Banks: Honourable senators, a couple of weeks ago I had a dream that I was making a speech in the Senate. I woke up, and I was. In order not to turn that into a nightmare, I will be mercifully brief in my remarks, which will consist, in the main, of thanks for all the kind words that colleagues on both sides have said about me. I am very grateful for all of them, for the humour in them and for the compliments you have paid me.

I should give notice, however, that I reserve the opportunity to get off a couple of parting shots in the next couple of days, which I will do.

There are those among us who have reservations, which I have sometimes shared, about the time spent on making remarks on the occasion of the retirement of senators. I must tell you that as one approaches actual retirement those reservations subside.

Senator Murray, among others, was so modest as to not allow us the pleasure of telling him in this place of the high regard we had for him, to the extent that a few weeks ago, when Senator LeBreton and Senator Cowan were in the middle of remarks on another subject and began to note the fact that Senator Murray was about to depart, with his great knowledge of procedural matters, Senator Murray moved the previous question, which had the effect of forestalling any further comments on the value he had been to this place.

You will have noted that I have no such knowledge of procedural matters.

Honourable senators, the first time I ever came into this place, which was decades before I had a seat in it, the first time I came through the outer doors, walked up those stairs, through these doors and into this place, I was in awe, and I have been in awe every time that I have come through those doors and up those stairs and into this place for the past 11 years. I have been in awe every day of the great privilege of learning from all of you and from the work we all do in our committees.

It is the greatest honour of my life to be here among you. There is only one place in the world I would rather be sitting than here with you, and that is with Ida, to whom I owe everything, and I am looking forward to doing that now.

• (1510)

As well, there are others to whom I owe thanks: to Your Honour and to your predecessors, Senator Hays and Senator Molgat, for your assistance and many courtesies; to the leaders on both sides and their predecessors; to the table officers, who have gotten me out of the glue so many times; to the legislative drafters, who have been of such great assistance, in particular Mark Audcent, to whom we send our very best, and to Michel Patrice; to the Senate Protective Services — senators, do not ever let them take that away from you because it is important to have our own; to the pages, who have also gotten me out of the glue many times; to Thérèse Gauthier and Tom Smith, sitting in the gallery today, whose support, guidance and direction have been invaluable almost since I came here; to Vince MacNeil, whose earlier advice was always right; to all honourable senators; and to the Fathers of Confederation for their remarkable foresight in creating this institution.

Most importantly, my thanks are to Ida, whose delightful company is the only company in the world that I find preferable to yours, honourable senators. Please always remember why this place exists, what this place is, why it is here, what it can do, and what it can be.

I thank you very much again for your compliments, honourable senators, and your many courtesies over the years. I will miss you, and I will see you tomorrow and Thursday.

Hon. Senators: Here, here!

ROUTINE PROCEEDINGS

COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

2011 FALL REPORT— REPORT AND ADDENDUM TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the 2011 Fall Report of the Commissioner of the Environment and Sustainable Development, as well as an addendum that contains copies of environmental petitions received under the Auditor General Act between January 1 and June 30, 2011.

INTERPRETATION ACT

BILL TO AMEND—FIRST READING

Hon. Charlie Watt presented Bill S-207, An Act to amend the Interpretation Act (non-derogation of aboriginal and treaty rights).

(Bill read first time.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

(On motion of Senator Watt, bill placed on the Orders of the Day for second reading two days hence.)

[*Translation*]

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

MEETING OF THE STANDING COMMITTEE OF PARLIAMENTARIANS OF THE ARCTIC REGION, SEPTEMBER 28-29, 2011—REPORT TABLED

Hon. Consiglio Di Nino: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-Europe Parliamentary Association respecting its participation at the meeting of the Standing Committee of Parliamentarians of the Arctic Region, held in Syktyvkar, Republic of Komi, Russia, from September 28 to 29, 2011.

FOURTH PART, 2011 ORDINARY SESSION OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, OCTOBER 3-7, 2011—REPORT TABLED

Hon. Consiglio Di Nino: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-Europe Parliamentary Association respecting its participation at the Fourth Part of the 2011 Ordinary Session of the Parliamentary Assembly of the Council of Europe, held in Strasbourg, France, from October 3 to 7, 2011.

[*English*]

QUESTION PERIOD

PRIVY COUNCIL OFFICE

MINISTERIAL RESPONSIBILITY

Hon. Tommy Banks: Honourable senators, my question is to the Leader of the Government in the Senate. Could she tell the house whether the Government of Canada believes that the governance of Canada is based upon the rule of law?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, absolutely we believe that. As the honourable senator promised in his comments a few moments ago, I am sure that he will have other questions.

Senator Banks: I thank the minister for her direct answer. We may now call it "Answer Period."

Honourable senators, since that is so and she has affirmed it, could she tell the house whether the Government of Canada believes that ministers of the Crown are exempted from or beyond the application of the laws of Canada?

Senator LeBreton: Honourable senators, my answer is the same as previously stated. Our government acts within the law and within the parameters of what is expected of governments when they are elected.

I will sit down so that the honourable senator may ask the third part of his riveting question.

Senator Banks: Honourable senators, I am not sure that it is riveting, but I will ask.

So that Canadians will know in the future, will the leader's government continue to permit, if that is the word, its ministers to operate or to set themselves outside the rule of law, which means laws passed by the Parliament of Canada and that are part of the Statutes of Canada?

Senator LeBreton: I thank Senator Banks for his question. I am unaware of any one of our ministers acting outside the laws of the country, including acts passed by Parliament.

[*Translation*]

ENVIRONMENT

COMMITMENT AT DURBAN CONFERENCE

Hon. Pierre De Bané: Madam Leader of the Government in the Senate, climate change is one of the defining issues of our era. The time we have available to limit the average increase in our planet's temperature is quickly ticking away.

Your government has been in power for six years and Canada's efforts have been very modest compared to the urgency of the situation.

Furthermore, yesterday your government, through the Minister of the Environment, formally reneged on its international climate change commitments two hours after returning from Durban, where he denied that he intended to withdraw from the protocol. This decision had been expected for some time as the government has been accused of derailing the efforts of countries that want to take immediate and concrete action.

If we renege on our international commitments while pointing the finger at other major emitters such as China and India, what is preventing these countries from withdrawing from a future international agreement and citing the Canadian precedent set by your government?

Has your government not just lost the little international credibility it had and that it could have used in future negotiations of a global environmental agreement?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, perhaps Senator De Bané is mistaken about what the Minister of the Environment indicated before travelling to Durban. It has been pretty clear since we formed the government that Canada always believed that in order to be part of a global climate change regime all the major emitters must be on board. That would include the major emitters of the United States, India and China.

• (1520)

Canada is absolutely committed to working together to address climate change, but we want to be involved in a process that is fair, effective and comprehensive, and allows us to continue to create jobs and growth in Canada. We believe a new agreement, with legally binding commitments for all major emitters, represents the path forward.

I believe the Durban platform builds on our work at Copenhagen and in Cancun. Our government has taken action since 2006 to make real reductions to greenhouse gas emissions. However, I think it has always been clear that Kyoto was not an agreement that would have ever made a difference. The fact is that it was signed by the previous Prime Minister, and we are all familiar with the quote of Eddie Goldenberg. He revealed that the government went ahead and signed the Kyoto protocol on climate change, even though they knew there was a good chance Canada would never meet its goals for pollution reduction. He said:

> Nor was the government itself even ready at the time with what had to be done.

Therefore, very clearly, an agreement was signed, and from 1997 to 2006 the government did nothing. When we came into government, we made it clear that we had great difficulty with the fact that the previous government had signed onto Kyoto. We have also made it clear ever since that we would work to ensure all major emitters were at the table and also work in partnership with our biggest trading partner, the United States.

[*Translation*]

Senator De Bané: The government says that the Kyoto protocol is in the past and that we must seek a new agreement with major emitters. However, while waiting for a hypothetical global agreement, the government has lost crucial years during which Canada could have made significant progress in reducing greenhouse gas emissions. By withdrawing from the Kyoto protocol, Canada is freeing itself of the obligation to publish annual greenhouse gas emissions data.

[*English*]

Honourable senators, the leader states that her government takes seriously the issue of greenhouse gas emissions. If that is true, would her government agree, on a purely voluntary basis, to

publish the progress that has been made on the issue of greenhouse gas emissions since they have been in government? Would she consider publishing that, on a purely voluntary basis, to show that her government takes this issue seriously?

Senator LeBreton: Honourable senators, it is fair to say that we have regularly made public the various measures we have taken in order to reduce greenhouse gas emissions. Let me be clear: As we have said, for Canada Kyoto is in the past. As such, we will be invoking our legal right to withdraw from Kyoto.

With regard to the government's record, and it is significant, I will put a few of the things we have done on the record. The Durban platform, which Minister Kent has just participated in, provides a fair and balanced framework for responsible and effective global climate action. Significant progress was made to implement initiatives established by the Cancun agreement, as I mentioned a moment ago. A mandate was agreed on to create a new post-Kyoto treaty to include commitments from all major emitters, which only makes sense, considering Canada still contributes less than 2 per cent of world emissions. We will continue to work with our international partners.

Our government is balancing the need for a cleaner and healthier environment by protecting jobs and economic growth, as I said a moment ago. We remain committed to reducing Canada's greenhouse gas emissions by 17 per cent below 2005 levels by 2020 and we are making good progress. Together with the provinces, we are already a quarter of the way to reaching our 2020 target. We are moving to reduce emissions with a sector by sector regulatory approach and have started with transportation and electricity.

On November 16, we released a consultation document on the development of new greenhouse gas regulations for new cars and light trucks for the model years 2017 and beyond. We published draft regulations for coal-fired electricity to encourage the phase-out of dirty coal.

We recently invested an additional $600 million in Canada's clean air regulatory agenda.

As I mentioned a moment ago, the U.S., as our largest trading partner and with our deeply integrated economies, is working with us on this. It only makes sense in the North American context that we align our approaches, where appropriate, with the United States.

FINANCE

CURRENCY THEMES AND DESIGNS

Hon. Nancy Ruth: Honourable senators, Minister of Finance Flaherty said of the new polymer bank note series, the seventh since 1935, that it is important for Canadians to see their stories reflected in the designs. The sixth series made visible progress in highlighting Canada's diversity and inclusiveness of underrepresented groups, including women, children and Aboriginals.

Can we be assured of greater diversity and inclusiveness in the seventh series? So far I know that the $100 bill has an image of a woman looking through a microscope. The Coast Guard Ship *Amundsen* has replaced the Famous Five on the $50 bill. What is the role of the federal government in the selection of currency themes and designs? Can the federal government provide leadership on criteria and ensure that currency designs must meet criteria such as diversity and inclusiveness in content and imaging? Has the federal government done this? Will the leader provide the relevant documentation of that to senators?

If I may, if I or any member of this chamber or any Canadian wishes to be one of the Canadians with which the Bank of Canada consults about what we show the world about our country and its full journey, what should we do? How can we participate directly?

Lastly, honourable senators, will the $20, $10 and $5 bills celebrate Canada's diversity and will Canadians see themselves reflected in the designs?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, obviously it behooves all of us to recognize the incredible work that the Honourable Senator Nancy Ruth does personally and professionally to improve the lives of women and girls in our country. Our government is also committed to recognizing the ongoing contributions of Canadians to improving the lives of women in communities across the country, especially the Famous Five.

As a little background, honourable senators, the Famous Five statue, which we see every day on Parliament Hill and is the most visited statue on the Hill, is there precisely because of the work of people in this chamber. Senator Joyce Fairbairn moved a motion, which I seconded, for the statue to have a prominent place on Parliament Hill. Up to that point, there were only men and monarchs on the Hill.

• (1530)

One of our colleagues in the Senate who shall remain unnamed, but who was the chair of the Internal Economy Committee, if senators want to look back at the record, did not think that was such a great idea and wanted the statue down on Rideau Street somewhere. Indeed, the legacy of the Famous Five endures in the Governor General's Awards, in commemoration of the Persons Case, which was started under Joe Clark's Conservative government in 1979. What's more, this past October our government commemorated the Persons Case as a national historic event.

The Bank of Canada has, as the honourable senator pointed out, regularly introduced new bank notes over the past few decades, often honouring different aspects of Canadian life, including the Famous Five on the $50 bill, although I must confess that I do not carry around a lot of $50 bills in my pocket.

We have moved, as honourable senators know, to a new polymer banknote to improve security and save taxpayers money. We are also introducing new designs on all of the banknotes. For

instance, as the honourable senator pointed out, on the new $100 bill we honour the contribution of Canadian women in science, and on the new $50 bill we honour our men and women who serve in the Canadian Coast Guard, this being their fiftieth anniversary.

With regard to the $5, $10 and $20 bills, I will have to take that question as notice. I am not aware, at the moment, of what will mark the backs of those bills, and I do not believe a decision has been made in that regard. However, I do believe this is a way to mark many contributions of Canadians, including the major contributions of women to our society.

Senator Nancy Ruth: When the leader reports her answer, could she also include the criteria that the government gives the Bank of Canada in terms of diversity and inclusiveness? I would appreciate knowing how that is done and how one can be part of choosing the images that go on the bills.

Senator LeBreton: I would be happy to do that.

ENVIRONMENT

COMMITMENT AT DURBAN CONFERENCE

Hon. Grant Mitchell: Honourable senators, I doubt that there will ever be a $20 bill that will commemorate any action or contribution by this government to climate change action in this world.

The Durban Climate Change Conference represents yet another stunning setback for Canada's international reputation. In a few short days, this government was able to attract immense criticism for a variety of things like: using foreign aid policy to intimidate certain undeveloped nations, working behind the scenes to undermine these critical international negotiations, reneging on a commitment we made to fund the international green climate fund and generally being the poster child for bad international behaviour.

How many of those 1,500 communications experts that are currently spinning the message for the Harper government did it take to create this public relations disaster?

Hon. Marjory LeBreton (Leader of the Government): As usual, the honourable senator's facts are completely wrong, just as his attacks were last night on my colleague the Honourable Tony Clement. The honourable senator seems to think he can make these outrageous comments in the Senate, which he can because there is no legal recourse. However, that does not make them any truer just because they are said within the confines and safety of the Senate.

Some Hon. Senators: Hear! Hear!

Senator Mitchell: Thank you for addressing that question.

Does the government not get that there is a direct relationship between our international image, the way that people feel about Canada in the world, and countries' inclinations to turn down projects that are critical to Canada like the Keystone Pipeline?

Senator LeBreton: Another fantastic leap of whatever. The fact is that we went to Durban, as we did to Copenhagen and Cancun, very committed to moving this file forward. It is very important, and I think it is supported by public opinion surveys. The Canadian public actually get this. They actually believe that the government should take positive steps to reduce greenhouse gas emissions and to work with our international partners, but they do not believe that Canada should be at the table when the major emitters, the United States, India and China, are not. It only makes sense.

Therefore, Minister Kent, who has just returned from Durban, participated fully in all of the meetings and came away feeling very assured that there is now a plan to move forward and deal with climate change issues, with the full knowledge that we have at least got the major emitters all at the table and acknowledging that action must be taken.

Hon. Gerry St. Germain: Honourable senators, my question is also for the Leader of the Government in the Senate.

I do not profess to be an expert on climate change, but how can the other side not take seriously the fact that we now have the major emitters at the table? They were not there before. I am trying to figure this out.

Why would anyone sign an agreement when the major emitters are not party to it? They are there now, and there still seems to be discontent. If the major emitters are not present, what difference would it make if we continued with the Kyoto Protocol, which was probably signed just so they could say they signed an agreement?

Can the leader explain that to me? I am speaking sincerely. I do not know what is going on. I am more confused now than ever.

Senator LeBreton: The honourable senator is absolutely right. It has been acknowledged by those who signed the Kyoto accord in 1997 that, first, they did not have a full appreciation of what they were signing and, second, that they had no intention of living up to the commitments they had agreed to, especially when it did not include the major emitters.

Honourable senators, let us have a look and see what would happen. Under the Kyoto Protocol, Canada would face radical and irresponsible choices if we were to avoid the punishing multibillion dollar penalties. To meet the targets under the Kyoto Protocol for 2012, we would have to remove every car, truck, ATV, tractor, ambulance, police car and vehicle of every kind from Canadian roads, or close down the entire farming and agricultural sector and cut the heat to every home, office, hospital, factory and building in Canada. That is what we would have had to do to live up to the commitments signed by the previous government.

What is the cost? It would cost thousands of jobs and the transfer of $14 billion from Canadian taxpayers to other countries. This figure would have been the equivalent of $1,600 for every Canadian family. Guess what? After having done all of that, honourable senators, there would have been no impact on greenhouse gas emissions in the world.

JUSTICE

CIVIL LEGAL AID

Hon. Catherine S. Callbeck: Honourable senators, my question is to the Leader of the Government in the Senate.

Recently the Prince Edward Island Advisory Council on the Status of Women launched a campaign to draw attention to and create greater awareness of the need for greater access to justice in family law matters.

The chair, Diane Kays, has spoken a great deal about the problem many women are having in financing legal fees for these family law matters.

I want to quote what she said:

> The cost of accessing the justice system for family law matters, such as separation and divorce or custody and access or child and spousal support is very high. This situation affects many low and middle income Islanders, but it leaves women and children who fear violence are especially vulnerable.

• (1540)

I am sure that is the case across Canada, not just in my province.

Since 2007, the federal justice minister has refused to meet with his provincial counterparts to discuss civil legal aid. Why will the federal Minister of Justice not meet with the provincial ministers to discuss this important issue?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I have no proof that the federal Minister of Justice has refused to meet with his provincial and territorial counterparts, so I will not accept that assertion at face value.

However, I will tell the honourable senator that the Minister of Public Works and Government Services and Minister for Status of Women, the Honourable Rona Ambrose, has increased funding for women's programs to its highest level. More groups are applying than ever before — and these groups do have to apply — because this practical approach is working, as opposed to approaches in the past.

Last year, over $19 million in grants and contributions was provided by Status of Women Canada to organizations in support of 300 projects. These projects cover the gambit of various endeavours that women's organizations have been involved in, including empowering and supporting diverse groups of women, tackling the challenging issues of violence and economic security, and also giving grants so these groups can participate in democratic initiatives to advance the cause of women and to help stamp out the scourge of violence against women.

Senator Callbeck: I certainly appreciate that the government is putting more money into women's projects, honourable senators. However, if the leader follows up the previous question I asked, she will find that back in 2005-06, under the former government, the Minister of Justice worked hard with his provincial counterparts, but in 2007 the Minister of Justice refused to meet. I think the leader will find that to be the case.

To quote Chief Justice Beverley McLachlin:

> Providing legal aid to low-income Canadians is an essential public service. We need to think of it in the same way we think of health care or education. The well-being of our justice system — and the public's confidence in it — depends on it.

Many organizations have suggested that the money going to the provinces for civil legal aid should be a dedicated stream of money and that it should be outside the social transfer. Has the government given any consideration to this?

Senator LeBreton: Obviously, the honourable senator expects me to make a commitment, which I will not do, to reinstate the Court Challenges Program. That program outlived its usefulness. Legal aid is administered, as far as I know, by the provinces.

There are many avenues of support for various women's groups, primarily through Status of Women Canada. I thank the honourable senator for acknowledging that the funding for women's programs has increased incredibly under our government.

Insofar as the honourable senator's claim that the Minister of Justice has refused to meet with his provincial counterparts, I find that difficult to believe. However, I will take that question as notice and get an update from the Minister of Justice as to whether, in fact, this is the case.

ENVIRONMENT

COMMITMENT AT DURBAN CONFERENCE

Hon. Nicole Eaton: Honourable senators, I have a supplementary question to Senator St. Germain's question to the Leader of the Government in the Senate.

Canada's carbon footprint is less than 5 per cent; the oil sands is less than 2 per cent. Does the Leader of the Government in the Senate think this new Durban round will give Minister Kent a shot at selling Canada's story on a wider stage?

Hon. Marjory LeBreton (Leader of the Government): I certainly hope so, honourable senators.

Senator Mitchell: Do not count on it.

Senator Mercer: Welcome to fantasyland.

Senator LeBreton: I have read many of the reports. Most of the criticism of Minister Kent and his performance has not come from international groups, but from Canadian groups.

Senator Mitchell: She is getting just as bad an answer.

Senator Cordy: Performance.

Senator Hervieux-Payette: Order, order.

Senator LeBreton: That only signals that Question Period is over; it does not signal that I cannot give my answer.

The fact is that I do believe, honourable senators, that now that we have everyone at the table, we will have the attention of the world. Of course, the world has already acknowledged that Canada is a minor contributor to greenhouse gas emissions, and the oil sands even less so. However, we have a whole industry here in Canada and in North America that has decided to target the oil sands.

I would say that the answer is yes, honourable senators; it will give Minister Kent a much better opportunity to sell Canada's story.

Senator Mitchell: You are absolutely dreaming. You are spinning the unbelievable.

ORDERS OF THE DAY

KEEPING CANADA'S ECONOMY AND JOBS GROWING BILL

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Gerstein, seconded by the Honourable Senator Braley, for the third reading of Bill C-13, An Act to implement certain provisions of the 2011 budget as updated on June 6, 2011 and other measures.

Hon. Serge Joyal: Honourable senators, in the debate on Bill C-13, I would like to address essentially one part of the bill, namely, part 18 of the bill entitled "Canada Elections Act," which contains only one provision: an amendment to subsection 435.01 of the Canada Elections Act.

I want to raise this issue, honourable senators, because one of our key responsibilities in reviewing legislation coming from the other place is to look into the constitutional impact on either the Constitution of Canada or the Charter of Rights and Freedoms.

In reading that part of Bill C-13, I paused a moment to ask myself whether this question was not challenging, essentially, section 2(*b*) of the Charter of Rights and Freedoms, which is the protection of freedom of expression and which states, under "fundamental freedoms," section 2:

> Everyone has the following fundamental freedoms: . . .
>
> (*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication . . .

The reason I bring this section to your attention this afternoon, honourable senators, is that we are in the period of the year whereby each one of us are solicited by many charities, organizations or initiatives to provide our financial support. I can name a few. They include, of course, charities that alleviate conditions of poverty. There are initiatives to enhance our cultural institutions. I see senators on both sides whose names have been attached to important initiatives. I would not like to mention them, but I know some of them very well. Some senators are involved with literacy initiatives and others might be involved in animal protection societies. There are those who like guns and who could be interested by the activities of the National Rifle Association and provide them a lot of money.

Each one of us, like any Canadian, is free to give as much as we want to all those causes. Our limit is essentially the strength of our conviction, the level of our individual generosity and the depth of our pocketbook. We are free to support any initiative. In fact, there are many government initiatives that incite Canadians to volunteer and to take a part in improving the social, cultural and economic conditions of Canadians. That is a principle of our society.

• (1550)

However, when we approach the issue of democracy in Canada, we are in a different kind of context. Democracy is an important issue in our country. Democracy, in fact, is one of the four foundational principles of our Constitution.

The Supreme Court of Canada, in 1985, in the famous secession reference — and many honourable senators will remember the reference which was addressed to the Supreme Court of Canada in relation to the secession of Quebec — in reviewing the principles of our Constitution, the Supreme Court clearly established:

> Democracy is a fundamental value in our constitutional law and political culture. While it has both an institutional and an individual aspect . . .

Later on the court continued by stating:

> . . . the democracy principle can best be understood as a sort of baseline against which the framers of our Constitution, and subsequently, our elected representatives under it, have always operated.

Finally, the court concluded:

> . . . this Court has interpreted democracy to mean the process of representative and responsible government and the right of citizens to participate in the political process as voters . . .

Democracy is a fundamental principle. When we want to look at this bill and various other bills that have been introduced in the Canadian Parliament in the last eight years, there have been many bills introduced that have impacted the exercise of the democratic principle. Some of those bills, of course, were related to the limit imposed on contributions to various parties.

The Supreme Court of Canada reviewed those limits in a famous case — I am sure senators on both sides will remember it — *Attorney General of Canada v. Stephen Joseph Harper*, in 2004. It was an important, seminal decision of the Supreme Court in relation to the principles established in limiting the contributions to parties or third-party groups. The Supreme Court of Canada stated the following in terms of limits to contributions, that imposing limits to contribution:

> . . . infringe the right to freedom of political expression guaranteed by s. 2(*b*) of the *Charter* . . .
>
> . . . limits, however, must be carefully tailored to ensure that candidates, political parties and third parties are able to convey their information to the voter . . .

In other words, the court stated repeatedly that:

> . . . liberal democracy demands the free expression of political opinion, and affirmed that political speech lies at the core of the Canadian Charter of Rights and Freedoms' guarantee of free expression. It has held that the freedom of expression includes the right to attempt to persuade through peaceful interchange. And it has observed that the electoral process is the primary means by which the average citizen participates in the public discourse that shapes our polity. The question now before us is whether these high aspirations are fulfilled by a law that effectively denies the right of an ordinary citizen to give meaningful and effective expression to her political views during a federal election campaign.

In other words, imposing limits to contributions is an infringement on the freedom of expression guaranteed by the Charter of Rights and Freedoms.

Then the question is this: Are those limits able to meet the test of section 1 of the Charter? In other words, are those limits demonstrably justified in a free and democratic society?

Since the court has already recognized that imposing limits is a violation of the freedom of expression, then the question is, essentially, are those limits demonstrably justified in a free and democratic society?

In other words, in order to look into the jurisprudence and the way that the Canadian Parliament has dealt with this issue, I went back again to the decision of the Supreme Court in the *Harper* case. The court was clear about the principle that must be followed when one is faced with an additional limit to that freedom of expression guaranteed by the Charter of Rights and Freedoms. There is no doubt in my mind that Bill C-13, in Part 18, imposes an additional limit to the freedom of expression, as guaranteed by the Charter.

In fact, the court, as honourable senators will remember clearly, when it is faced with a limit or an infringement on the Charter, applies the *Oakes* test. Those are the three questions that the courts want to check to meet the test if it is demonstrably justified in a free and democratic society.

The court states that the first question to be asked is whether it is desirable to state the purpose of the limiting provision as precisely and specifically as possible so as to provide a clear framework for evaluating its importance and the precision with which the means have been drafted to fulfil that objective.

That question has been established in a famous case that some honourable senators will know, the *Thompson Newspapers* case, which was an early case when the Supreme Court of Canada had to interpret the Charter of Rights and Freedoms once it was adopted in 1982.

In other words, the first question is this: What is the purpose of the legislation? How can we circumscribe that purpose?

In order to answer that first question, I went back to the statement made by the various government representatives who introduced the legislation in the House of Commons — because that type of legislation was always introduced first in the House of Commons — by the Prime Minister of Canada on February 11, 2003. That is when the first bills were introduced to exclude financing by companies and big unions and to establish public financing. That was done in 2003.

What was the purpose of the government or the principles underlying those pieces of legislation when they were first introduced in 2003? The then Prime Minister stated:

> . . . a bill that will change the way politics is done in this country, a bill that will address the perception that money talks, that big companies and big unions have too much influence on politics, a bill that will reduce cynicism about politics and politicians, a bill that is tough but fair.

When one looks into the operation of the bill at that time, it was a balancing bill. In one way, the bill imposed a prohibition on corporate and union financing, limiting it to only $1,000 per association, which was minimal, and for that limit and the additional limit of $10,000 on individual contributions, the other plateau of the scale was to establish public financing. In other words, the prohibition or the violation of the freedom of expression was compensated by public financing in order to achieve the objective of the bill, which was to prevent "money talks," or that big companies and unions would have too much influence on politics. In other words, there was a balancing initiative there.

Then one looks into the aim of the then President of the Treasury Board when introducing Bill C-2 All honourable senators will remember that bill, the Federal Accountability Act, and I am looking at the Honourable Senator Oliver, who was the sponsor of that bill in the Senate. I went back to what the then President of the Treasury Board, the Honourable John Baird, stated in the House of Commons on April 25, 2006 to circumscribe the objective of the then Bill C-2:

> There are a lot of methods about election financing. We believe that money should not have the ear of government, and the federal accountability act will help take government out of the hands of the big corporations and the big unions and give it back to ordinary Canadians. Our act will limit donations to $1,000 a year. It will ban contributions by corporations, unions and organizations.
>
> I believe the primary concern of our debate on this subject should be what we can do to increase the transparency of the political process so that Canadians can feel more confident in the integrity of our democratic system.

• (1600)

In other words, it was essentially *mutatis mutandis*, the same kind of principle to avoid creating the perception that big corporations and unions have a say in the public affairs of Parliament and of political parties. That bill, in my opinion, did not raise the fundamental issue.

The problem with Bill C-13 is that it removes from the compensation one essential element, the public contribution to political parties. I go back to the House of Commons debate when the Honourable Ted Menzies, on October 5, 2011, two months ago, introduced the bill to try to circumscribe the objective of the act. He said:

> Finally, it would respect taxpayers by: phasing out the direct subsidy for political parties . . .

It was shortly stated, but not much in terms of the objectives of the bill was stated in the House of Commons.

In fact, it was in the Senate that the intention of the act seemed to be more clearly stated when our colleague Senator Gerstein spoke on November 24, 2011. Senator Gerstein will certainly allow me to quote from his speech, and I believe he read from a written speech, as I was listening to him carefully. He said the following:

> The principle is no Canadian should ever be compelled to donate to a party whose policies are not in their interest, and no Canadian should be compelled to donate to a party whose principles they do not share.

Honourable senators, may I request five more minutes?

Some Hon. Senators: Yes.

Senator Joyal: Thank you. I will try to conclude quickly.

In other words, honourable senators, the reasoning for Bill C-13 is not directly linked with the original objectives, namely, to prohibit corporate and union donations, any more than it is linked to the compensation for those prohibitions by a public subsidy. There is not a direct link between the two.

The principle or the objective of transparency that was at the beginning of all those initiatives eight years ago is difficult to follow because, if you are trying to establish the principle that Canadians have to trust their political system, when you look at how the prohibition functions in the provinces, you get a very different picture than you do from the limits we have at the federal level.

In British Columbia, Saskatchewan, Newfoundland and Labrador and Prince Edward Island, there are no limits, and corporate and union donations are allowed. In other words, there are four provinces where there is no such bill as the prohibition that we have at the federal level.

Alberta, for instance, allows corporate and union donations, and there is a cap of $20,000 per year for contributions per citizen and $30,000 in an election year. We are far away from the $1,000 per citizen.

In New Brunswick, it is $6,000 for each party. As I understand, there are three parties in the New Brunswick legislature, so that means Canadian citizens or corporations and unions are allowed to donate $18,000 to the political process in New Brunswick.

In Ontario, it is $15,500, plus corporate and union donations are allowed.

In Nova Scotia it is $5,000 for each party, but there are no corporate and union donations.

In Quebec, there are no corporate and union donations. It has been brought back to $1,000, but for each party. If you check with the director of elections in Quebec, there are 14 registered parties, so that means a citizen could give $14,000 in total to all the parties. We are far away from $1,000 for one single citizen.

In Manitoba, there are no corporate or union contributions, and it is $3,000 per year per citizen.

In other words, in terms of the Canadian reality, at the federal level, we are in a world of its own.

It has nothing to compare with the Westminster style of democracy. In the U.K., for instance, there are no limits on the amount of donations that political parties can receive, and corporations are allowed. In Australia, all political donations come from big corporations. In New Zealand, there is no prohibition placed on who can contribute to political parties.

In Germany, there are no limits on private or corporate contributions. In the Scandinavian countries — we always think Scandinavia is the best model for us — there is no limit in Denmark, Norway or Sweden.

In Switzerland, the model of democracy, there are also no limits.

There are limits in France, however. The limit for individual contribution is 4,600 euros and, because there are no corporate or trade union donations, there is compensation through public funding, the same principle we originally had.

I am not talking about the United States, of course, because we all know there was a famous case in the Supreme Court of the United States last year, in 2010, *Citizens United v. Federal Election Commission*, whereby the Supreme Court in the United States and its majority held that corporate financing was allowed. Honourable senators will all remember the impact it had.

I am not suggesting here that a corporate or union ban is unconstitutional. That is not at all what I am alleging here. In the *Harper* case, the court has recognized that those limits could exist and are constitutional.

The principle is that the limits we have placed at $1,000 per citizen at the federal level, with no compensation for unions or corporations or any other public money, in my opinion, goes overboard and could be challenged in court. As I say, the political reality in our country does not sustain a principle that is so stringent that, in fact, the limits imposed would violate the freedom of expression in section 2 of the Charter and cannot be saved under section 1 of the Charter. We cannot demonstrably justify in a free and democratic society of any OECD country or any other province that those limits are essential to maintain a credible political party system.

I feel, honourable senators, that it is our duty to reflect on that when we vote on this "well-intentioned" legislation. I do not doubt the objective that Senator Gerstein expressed on behalf of the government, but there is an impact that could open a challenge. I would suggest that we consider this before voting for this bill which would remove the balance of the original bill that was saved by section 1 of the Charter, to see if it could survive the test.

[*Translation*]

Hon. Claude Carignan (Deputy Leader of the Government): Would the honourable Senator Joyal take a question?

The Hon. the Speaker: I am sorry, but Senator Joyal's five additional minutes have expired.

Senator Carignan: In that case, I would like to use my own speaking time.

The Hon. the Speaker: All right.

Senator Carignan: I listened carefully to Senator Joyal, who said that imposing limits on election financing could be an infringement on freedom of expression.

In Bill C-13, clause 181 specifically deals with public financing for political parties and that, in my opinion, should be the subject of a whole other debate. Allow me to explain why.

• (1610)

Financing for political parties, as it stands now, is based on past results and that gives a considerable advantage to existing parties, while a new party that has not yet participated in an election, even if it has excellent ideas, will not receive public financing.

In 1993 I helped create a political party in Quebec, the Action démocratique du Québec, which is now merging with a new party. The first thing I noticed as legal counsel for our new party was that existing parties benefited from huge institutional advantages, while the new party, the ADQ, was starting out far behind.

With my assistant — Mr. Hébert, who is here in the gallery — we decided to contest the constitutionality of Quebec's Election Act. In *Hébert v. Procureur Général du Québec* provisions of Quebec's Election Act that gave advantages to the two existing parties — the ones that had come in first and second in the last election — were declared unconstitutional.

We also brought up an important issue, namely, the amount of public financing granted. However, the court did not deem it necessary to address these issues because the arguments regarding section 3 of the Canadian Charter of Rights and Freedoms, which pertains to the right to vote, were sufficient to overturn the provisions of the Quebec Election Act.

Therefore, when we take money from the public purse to fund political parties based on previous election results, we are violating the rights of new parties to form and to promote their ideas. Their ideas are attacked by other parties that are receiving money from the government. This restricts the freedom of expression, not of the existing party, but of the new party. The new party may have no money, but it may have excellent ideas that would be to the public's advantage if they were known.

Honourable senators, the danger is that, when political parties receive funding from the government, it creates a distortion and artificial financing for ideas that are sometimes out of date and that may drown out the message of a new party that is not receiving government assistance.

Thus I see this situation from a different and completely opposite perspective. Yes, this may violate the right to freedom of expression but it is the right of the newly formed party that is not receiving government financing.

That is why the new system will be based on party membership, people who want to contribute their own money, who want to support a party's ideas or agenda — within the allowable limits — who want to contribute the amount of their choice — within allowable limits — to the party of their choice. The government will contribute in any case through tax credits, which are also important.

Tax credits constitute a significant contribution from the government; however, they are not granted based on a political party's previous election results but, rather, based on party membership and the choice made by voters when they contribute. I believe that this is much more respectful of freedom of speech and it allows — and will allow, I hope — many new schools of thought to be shared in Parliament.

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

(Motion agreed to, on division, and bill read third time and passed.)

[*English*]

MARKETING FREEDOM FOR GRAIN FARMERS BILL

THIRD READING—DEBATE ADJOURNED

Hon. Donald Neil Plett moved third reading of Bill C-18, An Act to reorganize the Canadian Wheat Board and to make consequential and related amendments to certain Acts.

He said: Honourable senators, I would like to quote a great man who said:

> It's time for the wheat board and others who have been standing in the way to realize that this train is barrelling down a Prairie track. You're much better to get on it than to lie on the tracks because this is going ahead. It's time for the wheat board to go out in a dual marketing environment, to cultivate its customers and provide a competitive service because those customers are going to have choice in the future.

Today is truly a great day for Canada, and specifically for Western Canadian farmers. I am happy to be speaking about Bill C-18, the Marketing Freedom for Grain Farmers Bill. I am indeed ecstatic that this legislation has come back from the Standing Senate Committee on Agriculture and Forestry with no amendments.

The committee heard testimony from witnesses from all across Canada who were representing all parts of the grain industry, including rail, port authorities, grain commissions, the Canadian Wheat Board and, most importantly, western farmers and producers.

It is a great day for Kenton Possberg, from Humboldt, Saskatchewan, and his two sons, Spencer and Taylor. They now know that their father will be able to market all of his grain where he chooses, without fear of reprisal, criminal charges or indeed being sent to jail. They will grow up knowing that they will have the right to market their crops as they choose, after taking all of the risks of purchasing their seed and fertilizer, as well as planting and harvesting their crops.

Jim Chatenay, a Western farmer and former Wheat Board director who spent time in prison for selling his own wheat, stated at the committee hearings:

> On my second term, in 2002, I went to prison because I had to pay a debt off. In 1996 I crossed the border without the Wheat Board's blessing. I was a director at the time. That was not in 1996 but in 2002. I crossed the border and guess what? I got sentenced to a $4,000 fine or 64 days in jail for donating one bushel of wheat to a 4-H club. All I wanted to do was make a protest that things have to change.

He further went on to state:

> The biggest myth of all is that there is no premium. If there is one, it is so small that the administration fees gobble up everything that the so-called premiums are supposed to deliver. For example, when I went there in 1998, we had administration fees of around $25 million annually for selling about 30 million tonnes of wheat. When I left in 2008, after my full terms, three terms and you are out, we were selling 12 million tonnes and the administration fees were $84 million. There is something wrong here.

• (1620)

Indeed, honourable senators, there is most definitely something wrong when your sales drop by 60 per cent and your administration fees more than triple.

Unlike the Liberal Party, our Conservative government respects farmers' right to self-determination. Farmers should decide for themselves whether they want to market through a pool or an open market. We stand by farmers from all across the Prairies. We support Canadians who have been writing to their members of Parliament and senators to move ahead with this legislation. We are here to defend farmers' right to decide their own future.

Honourable senators, I want to talk about positive change for agriculture. For farmers, every day on the farm is a time of change. Canadian wheat, canola, pulses, barley and other grains are known by our customers all over the world for their unrivaled consistency and quality. This consistency and quality, honourable senators, is the result of our hardworking farmers understanding what needs to be done to grow the best crops in the world, whether that is through irrigation, seeding, fertilizing or planting the right rotations. It is farmers that grow these top-quality crops, not the Wheat Board.

There has been much misinformation regarding who grades the quality of Canadian wheat and barley. Many have wrongly suggested the Wheat Board is responsible for grading the wheat and barley. This is simply not the case. It is the Canadian Grain

Commission that sets grain standards and regulates grain handling to ensure a safe and dependable product for domestic and international markets. This will continue to be the case under Bill C-18.

Since 2006, when this government was given its first mandate, we have put farmers first in all of our agricultural policy decisions. We know that when the farm gate is strong, the whole value chain can succeed. Five years later, after receiving a strong, stable majority mandate from Canadians, we continue to work with farmers to make sure that they are able to earn their money from the marketplace and not the mailbox.

It is happening. For the first three quarters of this year, Canadian farmers earned almost 11 per cent more dollars from the market than they did for the same period last year. We continue to create a business environment that allows our farmers to grow and prosper. The agriculture industry in turn is driving our economy and without question is helping lift Canada out of what has been a difficult economic recession. One thing I know, we did not get to this point by being complacent and relying on yesterday's solutions, nor did Canadians send our government to Ottawa to stick with the status quo.

If farmers are expected to feed seven billion people on this planet, we know they increasingly need trade rules that are science-based, transparent and predictable. We need trade rules that foster, not frustrate, innovation, which is so critical to boosting productivity. That is why Canada is taking a leadership role on the issue of low-level genetically modified presence in grains. We are consulting with industry and governments to develop a realistic, pragmatic policy that facilitates trade. We have secured a great deal of political interest, and now the Minister of Agriculture is looking forward to hosting an international officials meeting early next year to start nailing down the technical path forward.

We know that science is a vital building block to a bright future for farmers in the grain industry, and we work with industry because they know best what they need to grow and prosper. After all, so many farm innovations start in a farm shop or with a small manufacturer. Unfortunately, many of them die on the vine before making it to market. That is why in this year's budget our government set aside $50 million for agricultural innovation, a program that aims to grease the wheels of innovation, whether we are talking about a new technology, a new process or a new service.

When we have an open and competitive marketplace, we can attract investments, encourage innovation and create value-added jobs. The fact is, today's entrepreneurial farmers are proving over and over that they can and will help drive our economy if they have control over their farm and over their bottom line.

Much has been said regarding the Australian Wheat Board and many of the naysayers opposite have said that the deregulation in Australia had a negative impact on farmers. Honourable senators, this is far from the truth. Evidence shows that Australian wheat farmers are better off now than ever before. The number of exports has doubled. Wheat production reached record levels of 26 million tonnes in 2010-11. This is up from 20 million tonnes averaged over the previous 10 years. Productivity has improved. There are now 26 export organizations. There are more than 60 pools, and there are new job opportunities, more investment and efficiencies.

I would like to quote Dr. Craig Emerson, the Australian trade minister, who stated:

> The Australian experience has been unambiguously good. It has been very good for Australian wheat farmers.

It was a "remarkably smooth" transition. I would say that it has "overwhelming support" in the farming community.

No longer should farmers' individual rights be trampled by an inefficient and ineffective monopoly. Farmers are business people. They have put their own money on the line to build their businesses and grow their profits. They have always decided what to plant and when to harvest, and they have made marketing decisions on their canola and special crops like peas, lentils, beans and oats, as well as their livestock.

Still, Western farmers have been denied the right of running their business where it matters most, at the point of sale, until now. The legislation that our government has introduced will give Western farmers the marketing freedom over their wheat, durum and barley. This will make sure Western farmers have access to the same market opportunities long enjoyed by farmers in Ontario.

Unlike those who want to give only a percentage of farmers their marketing choice, our government will not allow an expensive survey to trump farmers' individual rights. Instead, our legislation gives every farmer in Western Canada marketing freedom, and they will have the choice to either sell through a voluntary Wheat Board or on the open market.

The Marketing Freedom for Grain Farmers Bill gives every farmer in Western Canada the freedom to choose how they market their grain, whether that is to a buyer who pays the full price on delivery or through a pool offered by the Canadian Wheat Board. This bill allows farmers and grain companies to enter into forward contracts immediately for the purchase or sale of wheat, barley and durum for execution after August 1, 2012. Our comprehensive plan brings certainty and clarity to Western Canadian grain farmers, as well as industry and market.

Our government has always maintained that farmers must have a choice in how they market their grain, whether that is individually on an open market or through a voluntary Wheat Board. This bill enables the government to provide the Canadian Wheat Board with the support required to operate as a voluntary marketing organization, allowing it time to transition to full private ownership. We will work with them to ensure this transition happens as soon as possible. This will allow farmers and the entire value chain to plan accordingly and transition in an orderly fashion.

As with any change, there are always those who have trouble understanding how change will be better. Not only does Parliament have the right to change legislation, but our government has the responsibility to deliver on the promises we made to Western Canadians.

Much has been stated in the other place about Conservative members of Parliament being in conflict of interest because they are both farmers and members of Parliament. Honourable senators, that simply makes them concerned stakeholders.

As Todd Korol from Reuters stated in *The Globe and Mail* last week:

> . . . Conservatives, Canadian Alliance MPs, Reformers, and Progressive Conservatives have dominated the ranks of the parliamentary farming community. Roughly three-quarters of politician-farmers have been Conservative in the last four decades, and in every election since 1957 the Conservatives have sent more farmers to the Commons than any other party. .

• (1630)

Our government will work with the staff at the Wheat Board and the farmers who wish to continue to use it to ensure that a voluntary board has the best possible opportunity to succeed.

Regardless of where you stand on the debate, there are few who can argue with the value of investments already being made in anticipation of the marketing freedom for wheat and barley. Rather than circle the wagons, we are seeing key stakeholders coming forward with new ideas on how to harness the benefits of an open market for farmers.

Rahr Malting in Alberta is increasing its storage capacity through a $6-million investment to help farmers better manage their storage risks and ensure top-quality barley for malt throughout the year.

That means 20 construction jobs for that rural community. As well, a $50-million announcement was made by Alliance Grain Traders to build a pasta plant in Regina. Once built, the plant will employ 60 people and 150 people during its construction.

On both sides of the border, we are seeing renewed interest in wheat, with commodity exchanges in Minneapolis and Winnipeg both announcing future contracts for Canadian wheat. This, honourable senators, is great news for my province, and it means one more risk management tool in our producers' tool box.

Kevin Bender, President of the Western Canadian Wheat Growers Association, stated at our committee hearing that:

> We also believe an open market will result in much greater private investment in wheat research. This will give prairie farmers the ability to have access to improved genetics and more choices to grow those varieties best suited to each individual farmer.
>
> In short, we believe that the creation of an open market will significantly increase farmer incomes and contribute to much greater prosperity on the prairies. We again urge all senators to ensure this legislation is passed quickly.

Brian Otto, President of the Western Canadian Barley Growers Association testified that:

> In 2007-08 crop year, world durum prices were at historical highs. The prices had never been seen by farmers in their farming careers. That particular year, through Canadian Wheat Board marketing system, we were only allowed to deliver 73 per cent of what we produced. The Wheat Board asked us to carry over 27 per cent of that durum into the next marketing year.
>
> In that time, from one crop year to the next, the price of durum dropped by $136 a tonne, which we were not able to sell into. The following year we were only allowed to deliver 52 per cent of our durum through the Canadian Wheat Board marketing system. In that particular year, durum dropped another $170 a tonne. That cost our farming operation $67,000. That is a serious impact on any farm when it comes to cash flow management. This whole argument is about cash flow management on the farm.

Honourable senators, the sky will not fall under marketing freedom. The Wheat Board will still be there. The address will still be the same: 423 Main Street, Winnipeg, Manitoba. The appointed directors will stay the same during the interim for continuity.

Senators opposite have stated over and over again their concern about the appointed directors versus elected directors. After the transition period, the new Wheat Board will decide whether to have elected directors or appointed directors.

The Wheat Board will also continue to offer marketing for those farmers who choose to use it. That is the operative word, honourable senators, "choose."

Those farmers who do not want to use the single desk, who feel they are held back by it, who want to add value to their product or market their own way will be able to do that, too. It is the best of both worlds. That is called choice, honourable senators. That is called freedom.

As we all know, nothing comes easy. Change brings challenge, but it also brings opportunities. There is no doubt there will be new allegiances and new alliances coming together as the industry transitions to the new reality. That is good and healthy, and it is already happening. Our government is working diligently with the industry to make the road to an open market as smooth as possible so industry and farmers can capture those opportunities.

During our extensive consultations through the working group and elsewhere, industry has raised a number of valid issues around transition. Our government is sitting down with them to work through these issues. While some prefer to fear monger about good news like this, our government is working diligently with the entire value chain to make the road to an open market as smooth as possible.

We know that the strength of our crop sector, not just for wheat and barley but for the full range of Prairie crops, relies on an efficient and effective logistics chain from the farm to the customer. That is why the honourable Minister of Agriculture recently announced the creation of a Crop Logistics Working Group that will feed into the Rail Freight Service Review facilitation process.

This working group includes experts from the grain value chain in an effort to feed the agricultural industry's viewpoint into the rail facilitation process.

It will be a great sounding board for all the players to find common ground and exchange ideas in a number of key areas, including views in support of the facilitation process following from the Rail Freight Service Review; transportation and supply chain issues arising from the transition to marketing freedom for wheat and barley; performance measurements along the supply chain; and other issues that might arise.

This working group has been well received by the industry. I would like to read a couple of comments from some of the key stakeholders.

This is from Rick White, general manager of the Canadian Canola Growers Association:

> Canola is Canada's number one cash crop for farmers and over 80 percent of the crop exported, responsive rail service is essential to our industry. We're very pleased that canola farmers have been invited to the Working Group table and we look forward to getting the dialogue started immediately.

Kevin Hursh, executive director of the Inland Terminal Association of Canada, whose 23 locations across Saskatchewan and Alberta handle 2.5 million tonnes of grain, pulses and oilseeds every year, said:

> The Inland Terminal Association of Canada is hopeful that the move to Rail Service Agreements can improve the flow of grain to export position and it's great to have input into the implementation process.

Matt Sawyer, chairman of the Alberta Barley Commission representing the province's 17,000 barley farmers, said:

> Transportation remains a key concern for barley growers. Participating in this group will allow us to discuss concerns and shape key policy points around the issue going forward.

From the Saskatchewan Short Line Association that represents 11 short lines in Saskatchewan and one associate member in Manitoba:

> The Saskatchewan Short Line Association would like to commend Agriculture Minister Gerry Ritz for the formation of the Crop Logistics Working Group. The association is also thankful for being allowed to be part of this Working Group.

Finally, from Doug Chorney from Keystone Agricultural Producers, Manitoba's largest general farm policy organization representing over 7,000 farm families and 22 commodity groups throughout the province:

> We are pleased the federal government is responding to input from general farm organizations to ensure farmer interests continue to be considered as the recommendations from the Rail Freight Service Review are implemented.

This working group is about bringing everyone to the table to move the sector forward. We want to ensure that the players from the farm gate and beyond will get a full airing with the goal of building an efficient, world-class logistics system. We are looking at the whole value chain to make sure that every efficiency that can be driven is there. The goal is a strong, effective logistics chain from farmer to consumer.

This will help show our customers that we have the world-class system that can deliver what they need, when they need it.

• (1640)

On the issue of rail, our government recently announced the appointment of Mr. Jim Dinning to lead a facilitation process as part of the implementation of the Rail Freight Service Review. This process will bring together shippers, railways and other key players to develop a service agreement template and a streamlined commercial dispute resolution process. Once the facilitation process is complete, our government intends to table a bill to give shippers the right to service agreements with the railways and provide a process to establish such agreements should commercial negotiations fail.

As well, we will be working with Transport Canada over the next few months on a grain supply chain study. All these initiatives are about bringing everyone to the table to move the sector forward.

Producers have expressed concern about continued access to producer cars that take their high quality products from the farm to the port. Let me say that the right to producer cars is protected in the Canada Grain Act. The Canadian Grain Commission allocates these cars to producers and this will not change.

Under the new rules, producers and shortlines will be able to make commercial arrangements with grain companies or the voluntary Canadian Wheat Board to market their grain. Shortline railways are expecting some adjustments as they will have more options of marketing partners for the grain volumes they can attract from producers.

Kevin Friesen, President of the Boundary Trail Railway Company, who farms in Manitoba, says government is listening, and he is optimistic about the future of shortlines and the use of producer cars. Already we are seeing some exciting partnerships in what the *Western Producer* farm paper is calling "a breakthrough in railway cooperation." Mobil Grain Ltd. and West Central Road & Rail have teamed up to create Saskatchewan's twelfth shortline railway.

Big Sky Rail will run 354 kilometres of track on former CN lines west of Lake Diefenbaker. President Sheldon Affleck says:

> There is the possibility to probably at least double and . . . possibly triple what has come off that line. We have found in a short time . . . terrific farmer uptake.

As the Minister of Agriculture said in the other place:

> If farmers decide they want to use a producer car, they will phone the same number they always did. They will fill it with their own product and ship it to port.

There has been much to do about the Port of Churchill, and it appears that, no matter what our government or other stakeholders have stated, the fear-mongering about the demise of the Port of Churchill has been rampant. One senator even accepted the word of a random lady on an airplane who was flying home from Brazil and that of a misinformed farmer from Saskatchewan who stated that the Port of Churchill will close if Bill C-18 is implemented.

Brad Chase, President of OmniTRAX, the owner of the Port of Churchill, stated at a committee hearing:

> Going forward, our focus is clear: It is about diversification and looking north of us at the opportunity with freight and with fuel in Nunavut. There is a fast-growing economy there that we are in a good position to grow with. We also look at industry in Saskatchewan, and specifically the potash industry, where there is about 10 million metric tonne a year of export that we do not participate in at all, and the growth there will be significant. We expect over 100 per cent growth, from what we have seen and heard and understand, in the next five or so years. That export means rail supply and port capacity, and that is good news for us. We are excited about that opportunity.

During questioning at committee, I asked Mr. Chase about the opportunity of exploring other markets and specifically shipping fuel to Churchill and then north to Nunavut and other areas. The following is Mr. Chase's response:

> That is a great question.

I liked that.

> There is a significant growth in Nunavut. Right above us is the Kivalik region. The fuel requirements for companies such as Agnico-Eagle and the Government of Nunavut in that area are very large and growing. We have not had enough of a supporting role in that. We have worked hard in the last bit as well trying to reconnect that trade corridor that historically has been there. We have a 50-million litre tank farm in Churchill. It is one of the other products that we do ship. Freight and fuel to us straight north is a significant growth opportunity. The Government of Nunavut, as an example, is in the 200-million litre range and Agnico Eagle consumes about 70 million litres right now. There are other companies coming in to develop in that region. We see that as a growth market and would like to re-attract some of the business that historically has been part of the Manitoba base port support.

Mr. Chase went on to say:

> We have worked very hard in the last half a year really trying to understand how that market works so that, behind us, we have a valued proposition to producers, especially in Northern Saskatchewan and Northern Manitoba, for an alternative to what they see as potentially the large grain companies in a new market. We also see ourselves, in front, in being a partner with companies like ideally a new wheat board where we leverage the global trade and expertise they have to ensure that, from the producer to the consumer, we can complete a string and a deal can be done and we have a rail move and a port service to offer.

So you see, honourable senators, both the owner of the railroad to Churchill and the owner of the Port of Churchill are positive about their future.

Honourable senators, change is long overdue. It is precisely because this bill is so important that we need to move it through the Senate promptly. The industry, farmers and consumers around the world need certainty and clarity. Producers need to start preparing for next spring's planting; farmers will finally be able to own the product that they put into the ground.

I make no apologies for expediting this bill to ensure that farmers, processors and shipping industries will be able to count on the changes that are coming. The bottom line, honourable senators, is that Canada has a world-class grain industry, but we need to bring the tools we use in line with the modern-day realities of the marketplace.

Today we have a broader range of grains in Canada than ever before. Wheat now accounts for only one third of cropland, while in the 1950s three quarters of the land was in wheat.

We have a major new customer for grains in the form of the biofuels industry. Whether it is the 75-year-old Wheat Board or the 40-year-old Canada Grain Act, we need to modernize so that producers can meet growing global demand for food. Yesterday's answers cannot meet the challenges of today. We need new approaches from a new generation of agriculture. We need to embrace a future where young farmers will finally have the tools they need to make their farming dreams a reality. Whether we are investing in innovation or giving Western grain farmers marketing freedom, the government is helping farmers and the grain industry become competitive and profitable. We want to help entrepreneurs harness innovation, add value and create jobs and growth right across this great country.

Honourable senators will either vote to keep the Western grain industry tied to the past or they will vote to move it into the future. They will either vote to punish Western grain farmers for their place of residence or they will give them the same rights as farmers in other parts of Canada.

This vote is a choice between stifling the Western economy or creating new jobs and economic opportunities. This vote is a fundamental choice on whether government should shackle farmers or free farmers. Farmers who have long wished to sell their crops on the open market but could not for fear of going to jail will finally have freedom.

Farmers and the entire value chain need clarity and certainty as they begin planning. The sooner they have it, the better.

As you can see, honourable senators, this bill is about more than clauses and subsections. It is about giving Western wheat and barley farmers the same rights and opportunities enjoyed by farmers of other commodities in other parts of Canada. It is about giving Western farmers the right to do what they want with the crop that they plant, that they paid to plant, that they spent months to grow and that they worked tirelessly to harvest.

Our government trusts farmers, regardless of where they live or what crop they grow, to make their own marketing choices based on what is best for their own businesses.

We want to put farmers back in the driver's seat so they can continue to drive the economy. Exciting new opportunities lie ahead for farmers throughout Western Canada. This legislation is a vital step forward, and I hope all honourable senators will do the right thing, support farmers and vote to pass this bill.

• (1650)

Some Hon. Senators: Hear, hear.

Hon. Bert Brown: Honourable senators, I have two points to make. The Canadian Press has been reporting that changes to the Canadian Wheat Board have never been made without a plebiscite from the farmers of the four Western provinces. In fact, section 47.1 has seen many changes by some, but not by farmers.

When I was urged by my parents to take over the family farm, I did so. I formed a corporation named Brownhill Farms Limited. The Wheat Board claimed we could only have half of our initial payment for our wheat and barley because we were one single entity. My wife, Alice, began a letter campaign to change that rule of the Wheat Board. She succeeded when she wrote the member of Parliament for Bow River, Gordon Taylor. Mr. Taylor said in a speech that it was a travesty that Alice and Bert Brown would have to divorce and live in sin in order to get 100 per cent of their initial payment for their wheat crop. That action changed the Wheat Board for a large number of corporate farms from then on. There have been numerous other changes over the 90 years.

My second point is that it cost farmers millions of dollars for the practice of demurrage for ships at anchor in the harbour until the Wheat Board was ready to load them. All the charges were paid from the farmers' grain prices. That action by the CWB is traitorous to farmers and is unwarranted gouging. When anyone buys a new car or truck, there is a transportation fee on the invoice; that fee is paid by the buyer, not by the seller.

I passed three building sites in the 12 blocks from my apartment to this chamber; every one of them had three or four gravel trucks waiting to be loaded by the tract excavators. I assure honourable senators that the drivers of those trucks are being paid for every minute they wait. That cost is passed on to the contractor and then to the buyer. Only the Wheat Board gouges money, time and again, from the farmers that grow wheat and barley. Ontario and Quebec farmers can sell their wheat and barley wherever they want.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, on a point of order, it is customary that the critic on this side as second speaker would have 45 minutes. I understand that Senator Brown has spoken, but I wish to have the 45 minutes reserved for Senator Peterson.

Hon. Robert W. Peterson: Honourable senators, it has been a remarkable trip to get where we are today. If the Conservative Party in opposition in 2005 could have seen the conduct of the Conservative Party in government in 2011, they would have demanded their resignations.

I have never seen a government push through a bill with such contempt for the parliamentary process: debate curtailed, stakeholders silenced, amendments shot down, laws mocked, and courts ignored. It is difficult to see the consequences of this arrogance today, honourable senators, but there will be grave consequences, whether you agree with the intent of Bill C-18. Things have slipped through the cracks. Errors and poor judgments have gone uncorrected. Unintended effects will come to pass. The break from a single marketing system will be far messier, bloodier and brutal than it need be.

In short, the core purpose of the Senate — sober second thought — was never allowed to take place. All for what? I understand the government's desire to take credit for each and every action and to make positive change in the lives of Canadians, but it is grossly misguided.

Honourable senators, when you go back to your regions, do people on the streets remember which party amended a bill? Does the average Canadian even know how many committee hearings are held on any particular piece of legislation? Would they know how many hours of debate have taken place? No, of course not, but that is not the point. The point is that we do these things for good reasons. By thoroughly debating bills, hearing from a wide range of stakeholders and amending the fine details of legislation, including opposition proposed amendments; we produce the best laws for Canadian citizens. Thus, when we spurn the parliamentary process, trouble follows.

Last week's Federal Court ruling is a case in point. The minister has broadcasted his desire for market certainty for farmers far and wide; yet his approach has achieved the very opposite. The minister refused to consult with farmers on the decision to end the single desk, and the court found this conduct to be "an affront to the rule of law." The minister thumbed his nose at the court, launched an appeal and proceeded to continue to rush Bill C-18 through the Senate.

Some Hon. Senators: Shame.

Senator Peterson: He likes to highlight the house portion of the ruling that states that the "applicants confirm that the validity of Bill C-18 and the validity and effects of any legislation which might become law as a result of Bill C-18 are not an issue in the present applications."

Listening to his bluster, you almost miss that this battle was not conceded but simply never fought owing to a shortage of time. It would be entirely within the prerogative of the Governor General

to withhold Royal Assent until outstanding questions of law and any ongoing court processes were sorted out. What market certainty would there be if the Governor General held the bill back? Worse, while the government can continue to arrogantly proceed to try to pass the bill, what will happen when they try to implement Bill C-18? There will be a bonanza of lawsuits.

How can there be market certainty if the government is blocked from implementing the legislation? How can farmers plan to sell their grain if they do not know who they can sell it to?

Honourable senators, mark my words: by ramming this legislation through come what may, this minister and this government are going to put farmers in an untenable situation.

It will not stop in year one. While the government claims that there will be a gentle five-year government transition process, it will not work out that way. When pressed in committee in the other place, the minister said that he would celebrate swift removal of the Canadian Wheat Board's government backstop. "If they do it in two years, it will be great," he said.

After losing its monopoly, it only took two years before the Australian Wheat Board was sold off to Agrium, which left family farmers crushed under the weight of multi-nationalism. These farmers are leaving the business in droves. Imagine what will happen in Canada? The government refused to even allow farmers to provide feedback on the bill and on the transition plan.

There are too many unanswered issues with this bill. How can farmers have their concerns heard without elected directors? How will farmers get better prices when the government has not conducted a single credible study? Why are investment analysts and agricultural economists, like Richard Gray from the University of Saskatchewan, saying that prices will be lower? Why do experts say there will be few new value-added businesses created, unlike canola, because the structure of the wheat industry is completely different? How can farmers give themselves a financial buffer to ride out the transition when the government is taking $200 million of their money through the contingency reserve for the start-up money to fund the new Canadian Wheat Board?

• (1700)

What protections are there if the Wheat Board's competitors will only give it access to the port terminals at extortionist rates? What protections are there if their rates for grain elevators are exorbitant?

What safeguards will be left against the railway duopoly without the clout of the single desk?

How will producer cars survive without a Wheat Board to give them logistical priority?

How will short lines survive if producer cars disappear? Who will pay for the hundreds of millions of dollars in wind-up costs for the Wheat Board?

These are questions that could have been considered and at least mitigated if the parliamentary process had been allowed to proceed. Imagine how much better things would have been if farmers had been allowed to express their concerns at committee? Instead, they have had to express themselves by shouting from the visitors' gallery and dumping their grain at the doors of government MPs. It is a sad day for Canadian democracy.

Honourable senators, we can choose to rubber-stamp this abuse of Parliament, or we can stand up for our democratic rights and reject this train wreck. Let us stand up with farmers and tell the government to go back to the drawing board and do this right.

There is one other thing I would like point out because it was mentioned by Senator Plett. Liberals did not put farmers in jail; the Canadian Wheat Board did not put farmers in jail; the court put farmers in jail because they broke the law. I would think that my law-and-order colleagues on the other side would understand this. What is their mantra? When you do the crime, you do the time.

[*Translation*]

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I would like to address a point that captured my attention, specifically section 47.1, which we discussed during the debate on the question of privilege, in which legal and constitutional aspects were raised by opposition members primarily regarding how Bill C-18 was passed, based on a textual argument founded on section 47.1 of the act and on a Federal Court declaratory judgement.

It is worth re-reading section 47.1. First of all, on page four of the ruling, it states that a minister who represents the executive can no longer introduce a bill. I quote:

> The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, . . . either in whole or in part . . .

I will not repeat certain passages that say basically the same thing:

> (*a*) the Minister has consulted with the board about the exclusion or extension; and
>
> (*b*) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister.

I would remind honourable senators that the Federal Court justice specifically addressed the effect of passing Bill C-18 or the process of passing Bill C-18 as follows:

[*English*]

> The present Applications are simple in nature; they are directed at an examination of the Minister's conduct with respect to the requirements of s. 47.1. The Applicants confirm that the validity of Bill C-18, and the validity and effects of any legislation which might become law as a result of Bill C-18 are not in issue in the present Applications.

> The Applicants make it clear that their Applications are no threat to the Sovereignty of Parliament to pass legislation.

[*Translation*]

Our opposition colleagues nevertheless came to the political and legal conclusion that the process of passing the bill was illegitimate because the minister had not followed the manner and form described in section 47.1 in order to introduce the bill.

Is section 47.1 constitutional? Can a Parliament be bound — whether by manner and form or by substantive law — by a previous Parliament when it comes to passing an ordinary bill? I would like to emphasize "an ordinary bill" because, clearly, the situation is different for a constitutional or quasi-constitutional bill, as set out in the Canadian Charter of Rights and Freedoms, for instance.

Professor Hogg is clear, and the following passage is also cited in the ruling:

[*English*]

> Thus, while the federal Parliament or a provincial Legislature cannot bind itself as to the substance —

[*Translation*]

I emphasize that.

[*English*]

> — the substance of future legislation, it can bind itself as to the manner and form of future legislation.

[*Translation*]

Why can a parliament not bind a future parliament, especially on substance? The reason is simple. A parliament is sovereign, it cannot bind its successors by attempting to impose its policies in the future and thus breach the fundamental rules of democracy. It is the basis for the rule of law as described by Dicey in *The Law of Constitution*.

Section 42.(1) of the Interpretation Act reaffirms the principle, and I quote:

> Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

As the Supreme Court stated:

> But where, as in this case, a statute has no constitutional nature, it will be very unlikely to evidence an intention of the legislative body to bind itself in the future.

It is true that there is a school of thought that suggests that for an ordinary law, in a specific and clearly stated case, a parliament can adopt a procedure indicating the manner and form of future legislation.

However, a parliament that prevents a minister from introducing a bill without the prior approval of an unelected group does not set a manner and form requirement. It acts on the substance of the law. Even worse, it abdicates its power and its responsibilities to unelected people, which is unconstitutional, and obviously, contrary to the rule of law.

The Supreme Court, in *Reference Re Canada Assistance Plan*, quoted approvingly of a decision of the Supreme Court of South Australia in *West Lakes Ltd. v. South Australia*:

> Even if I could construe the statute according to the plaintiff's argument, I could not regard the provision as prescribing the manner or form of future legislation.

Honourable senators, I would like to draw your attention to the following:

> A provision requiring the consent to legislation of a certain kind, of an entity not forming part of the legislative structure . . . does not, to my mind, prescribe a manner or form of lawmaking, but rather amounts to a renunciation pro tanto of the lawmaking power.

These arguments are confirmed by the Supreme Court and quoted approvingly.

The Supreme Court also indicated, and I quote:

• (1710)

> It is clear that parliamentary sovereignty prevents a legislative body from binding itself as to the substance of its future legislation. The claim that is made in a "manner and form" argument is that the body has restrained itself, not in respect of substance, but in respect of the procedure which must be followed to enact future legislation. . .

As the author S.A. Smith said, this rule is logical and democratic because it prevents the majority of the day from extending its own perception of things to the detriment of legislators of tomorrow. That is precisely what the Liberal government did by adopting section 47.1.

First, it imposed its perception of things on the future parliamentarians that we are, here today.

Second, it abdicated its responsibilities as the legislator and put them into the hands of the unelected.

Third, it decided that a group of farmers could not only impose its views on other farmers, but on all Canadian citizens to the detriment of the collective interest of all citizens in the country.

That is why this type of legislation is not constitutionally authorized. As the Supreme Court says, a restraint on the executive, on the minister for example, in the introduction of the legislation is a fetter on the sovereignty of Parliament itself.

Lastly, even if it were constitutional, claiming, as some say, to only focus on manner and form, a Parliament can repeal or amend the legislation that determines the entirely valid manner and form without requiring that the legislation that repeals or amends be passed according to the manner and form prescribed in the section. In other words, there is nothing to prevent Parliament from amending section 47.1 without going through the procedure set in section 47.1.

In his book, Professor Hogg cites *Canadian Tax Payers Federation v. Ontario*, a case where Premier Dalton McGuinty passed legislation that imposed a new tax without using the referendum imposed by the Conservative government's old legislation. Peter Hogg said the following:

[*English*]

> The requirement of a prior referendum applied to the introduction of a bill imposing a new tax but did not apply to the introduction of a bill amending or repealing the Taxpayer Protection Act itself.

[*Translation*]

For an act imposing the manner and form to be effective, it must set out the manner and form that also apply to the act that would amend the section that sets out the manner and form, which is clearly not the case here. To illustrate his opinion, Professor Hogg cited the Federal Court of Appeal in a decision regarding section 47.1 of the Canadian Wheat Board Act. In his book, in note 45 (d) on pages 12 and 13, Peter Hogg said:

[*English*]

> In any case, section 47.1 does not restrict its own amendment or repeal.

[*Translation*]

He quotes Judge Karen Sharlow of the Federal Court of Appeal, who rendered a decision in 2008, once again with the Friends of the Canadian Wheat Board, in which she spoke about section 47.1. She said:

[*English*]

> We will note, however, that we do not read subsection 47.1 as fettering the sovereignty of Parliament. It does not stop Parliament from enacting any legislation it sees fit to enact, including legislation that amends or repeals section 47.1 itself.

[*Translation*]

This was a Federal Court of Appeal decision rendered in 2008.

Honourable senators, what do the Friends of the Canadian Wheat Board, Harold Bell, Ken Eshpeter, Terry Boehm, Lynn Jacobson, Wilf Harder and Keith Ryan have in common? All of these Friends of the Canadian Wheat Board were told in two Federal Court decisions, one in appeal and one in the first instance, that Parliament could make legislation, Bill C-18 in this instance, that amends the process, manner and form of section 47.1, since otherwise that would constitute an attack on the sovereignty of Parliament.

I am disappointed that parliamentarians here today, in this debate, are attacking or speaking out against the sovereignty of Parliament. Honourable senators, I believe that in this bill in particular, we must stop trying to impose our views for the future and to bind future parliaments. What is good today may not necessarily be good in 10 years. We must give future parliamentarians the discretion to pass bills. That is democracy.

[*English*]

The Hon. the Speaker *pro tempore*: Questions or further debate? The Honourable Senator Chaput, on debate.

[*Translation*]

Hon. Maria Chaput: Honourable senators, today, I would like to speak about the Canadian Wheat Board, a subject that has been on our minds a great deal lately and that certainly deserves to be discussed seriously and thoroughly. On a related note, I will also speak about Bill C-18.

The Canadian Wheat Board came out of the simple realization that Canadian farmers, as individuals, would have very little negotiating power when dealing with large grain and transportation companies. The Wheat Board's history is typical of Canada and characterized by the Canadian attitude that it is possible to overcome any obstacle by working together and demonstrating initiative and creativity. This is also the story of a government that, over 75 years ago, listened to farmers' concerns and worked with them to find a solution that met their needs.

I would like to point out, in passing, that the specific reason why the government got involved in this initiative with farmers was the major economic crisis that was occurring at that time. In a world that was still reeling from the economic crash of 1929, the Wheat Board offered farmers stability at a time of global economic uncertainty. There is a historical parallel in this regard.

I would also like to mention that, although participation was voluntary when the Wheat Board was created in 1935, this model had already been abandoned by the early 1940s, when participation became mandatory. It was found that voluntary participation simply did not offer the desired benefits, specifically stable income for farmers. Once again, there are lessons to be learned from history.

Since that time, the Canadian Wheat Board has become an institution of which all Canadians should be proud. From its humble beginnings, it became the largest wheat and barley dealer in the world, controlling 20 per cent of the international market. It is an institution run by farmers for farmers with an

internationally recognized head office located in Winnipeg. A total of 2,000 jobs in Manitoba depend either directly or indirectly to the Wheat Board. The Government of Manitoba even credits the Wheat Board with contributing hundreds of millions of dollars to its economy.

• (1720)

The province expresses concern on its website that, if the board is dismantled:

> Manitoba's future as a continental transportation hub could be compromised. The Port of Churchill and our Arctic trade opportunities would be jeopardized.

The Canadian Wheat Board is also an institution that, most importantly — since it was reformed in 1998 and 10 of its 15 administrators from then on had to be elected by farmers — really allows farmers to determine its path, priorities and future.

And of course our farmers were up to the task, increasing the number of options for members while maintaining the undeniable advantages afforded by keeping the single-desk system.

In short, for 76 years, Western Canada has had an institution that was born of the collective efforts of farmers and the government, one that has managed to grow and evolve through this same collective effort, in order to better serve farmers and all Canadians.

This last year has definitely been the least glorious year in the history of the CWB. Indeed, with all that has happened over the past few months, just one question keeps popping into my mind: how did we get to this point?

How did we get to such a point that, last November, we heard the federal Minister of Agriculture gratuitously accuse the Canadian Wheat Board Chairman of stealing money from its members, until the minister was forced to retract his comments?

How did we get to the point where cooperation between the board and the government has disappeared completely, to the point where it has been replaced by legal action? How did we get to the point where farmers' voices are suddenly being completely ignored, when they had been gaining more and more strength — and rightfully so — in the board's administration?

How did we get to the point where the government is putting doubts in people's minds, without any evidence at all, regarding the legitimacy and integrity of the democratic process among the members of the board? Have we simply forgotten that we are talking about an institution that took it upon itself to invite the Auditor General of Canada to audit its books?

How did we get to the point where we received a large number of letters from farmers who do not understand why the government is refusing to listen to them?

How did we get to the point where, finally, the Federal Court admonished the government for breaking the law?

So many troubling questions and so many answers that are still not forthcoming. Unfortunately, in light of all these questions, no one can say that the government dealt with the board's future in a thoughtful and responsible way. This quick and shameful degeneration was never inevitable.

Although the government was duly elected by Canadian voters, I dare say that it also knows that Canadians did not give it a blank cheque. I would also think that, despite what we have heard repeatedly, the government realizes that it is not always right just because it was elected.

Finally, I would like to believe that the government also understands that its right to implement its political agenda has never precluded its responsibility to communicate and collaborate, respectfully and in good faith, with the stakeholders concerned.

That is the very foundation of the principle of good democratic governance, as the Federal Court reminded us so well last week.

I urge the government to show restraint and dignity in its future public interventions and to seriously and soberly reconsider the fate of the Canadian Wheat Board. Last week, during the meeting of the Standing Senate Committee on Agriculture and Forestry, we heard testimony from a number of farmers who had serious concerns about the future of their farms. They deserve respect.

At the very least, since the matter is before the courts and the government has decided to appeal the ruling by the Federal Court, we should allow justice to take its course.

Again, our farmers deserve that and our democratic process deserves that.

[*English*]

Hon. George Baker: Honourable senators, I have just a couple of comments concerning this legislation. I was prompted by the intervention by the Government House Leader, in which he quoted from Professor Hogg and his text *Constitutional Law of Canada*. I might also put on the record that Professor Hogg also said this in his text *Constitutional Law of Canada*:

> Would the Parliament or a Legislature be bound by self-imposed rules as to the "manner and form" in which statutes were to be enacted? The answer, in my view, is yes. . . . Thus, while the federal Parliament or a provincial legislature cannot bind itself as to the substance of future legislation, it can bind itself as to the manner and form of future legislation.

To further rebut the argument, as the honourable senator is aware, in the Federal Court judgment this matter was raised by the Department of Justice on behalf of the minister. I notice that the honourable senator had in his hand this document here, which is the actual judgment of the Federal Court judge, signed by the Federal Court judge. He omitted these words of the Federal Court at paragraph 10:

> The Minister . . .

That is, the Department of Justice.

> . . . has attempted to argue that s. 47.1 does not meet the requirements of a "manner and form" provision. I dismiss this argument and find any debate on "manner and form" is not properly before the Court for determination. Section 47.1 is presumed to be constitutionally valid . . .

Then the judge goes on to explain the process whereby if you wished to challenge the constitutionality of a provision of the law, first, as we all know, a notice of constitutional question would have to be put before the court, which was not the case there; neither is it the case, as I understand it, in the appeal from the Department of Justice presently before the court.

Honourable senators, the question raised goes back to 1998. In 1998, I was in the other place and Senator Stratton was in this place. We were both sitting on the committees that dealt with the legislation that is being referenced here today.

I might say at the outset, honourable senators, that Senator Plett has done a great job in his speeches concerning the government position on this bill, and Senator Peterson has done a magnificent job in presenting the other side of the argument. Both presented solid arguments concerning this particular matter.

Back in 1998, we enacted section 47.1. That is when the section came in. This was at the time, honourable senators will recall, that, by election, two thirds of the members of the Canadian Wheat Board were to be elected by the farmers. We gave farmers control over the Wheat Board. Honourable senators will note that the Federal Court references the debates in the Senate in this judgment, not the debates in the House of Commons. It was the debates in the Senate that were referenced in his judgment.

• (1730)

The point is this: Section 47.1, referenced by the previous speaker for the government side, says this:

> The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV. . .

What is Part IV?

Senator Di Nino: I am sure you will tell us.

Senator Baker: Part IV says this:

> . . . no person other than the Corporation shall
>
> (*a*) export from Canada wheat or wheat products . . .
>
> (*b*) transport or cause to be transported from one province to another . . .
>
> (*c*) sell or agree . . .

This is the one-desk principle. In other words, section 47.1 said that you cannot change that provision without what? It says you cannot change this provision without a vote by the farmers and their approval of such a change.

If you go to the *Debates of the Senate* on that particular day, because the Federal Court judge says here, at paragraph 26:

> Commenting on an amendment to the bill that would become section 47.1, the Minister testified before the Standing Senate Committee on Agriculture and Forestry on May 5, 1998.

If one goes to May 5, 1998 one sees names like Senator Eugene Whelan, and of course we see Senator Stratton, who was front and centre to the matter. You find the Minister of Agriculture saying this prior to Senator Stratton's question, quoting from those Senate hearings:

> It would be up to the government of the day to avoid this argument about what is the right policy decision. This amendment says that if a minister is to make a proposal to Parliament to either increase or decrease the Canadian Wheat Board, the first hurdle is to have your vote among farmers.

He then reiterates it:

> . . . it would be very clear that we are talking about the introduction of a bill in Parliament, and that a vote would need to be held before that.

Senator Stratton then says:

> . . . I am sure you can give those answers in your sleep . . .

Senator Stratton went on to question the minister, and the minister reiterated, saying:

> Some important decisions will have to be taken, but better that those decisions be taken by farmers by some democratic means, rather than imposed by governments . . .

Some Hon. Senators: Hear, hear!

Senator Baker: Senator Stratton responded:

> I understand that. I am just worried that there will be something like Gunfight at the OK Corral . . .

Of course, Senator Stratton has been proven correct again. That is, in essence, what we are facing today.

What is clear, honourable senators, is this: There are arguments on both sides of this question. This question was not before the House of Commons. The House of Commons passed the bill. The

Federal Court judgment came after that. One wonders what would have happened if the Federal Court judgment had come while this bill was before the House of Commons.

Honourable senators, the judge said in the judgment:

> Section 39 of Bill C-18 proposes to replace the whole marketing scheme of wheat in Canada by repealing the *Act* after a transition period. I find that it was Parliament's intention in introducing s. 47.1 to stop this event from occurring without the required consultation and consent.

He continues:

> In my opinion, to accept the Minister's interpretation to the exclusion of the Applicants' would result in an absurdity . . .

The judge went on to make several other comments.

What I found interesting, honourable senators, was that, in giving his judgment, he only gave it in English. That is interesting. Yes, he only gave it in English. There is only one way you can do that in the Federal Court, as Senator Angus and Senator Nolin are aware.

That is, if you abide by section 20(2)(*b*) of the Official Languages Act, which states that the judgment of the court shall:

> . . . be made available simultaneously in both official languages but the court is of the opinion that to make the decision, order or judgment, including any reasons given therefor, available simultaneously in both official languages would occasion a delay prejudicial to the public interest or resulting in injustice . . .
>
> . . . the decision, order or judgment, including any reasons given therefor, shall be issued in the first instance in one of the official languages . . .

Unfortunately, the judge did not give reasons why he had gone to section 20(2)(*b*) of the Official Languages Act. He only says, at paragraph 3 of the introduction of his judgment:

> I am of the opinion that to make the present Order available simultaneously in both official languages would occasion a delay prejudicial to the public interest.

Unfortunately he did not elaborate further, but surely he meant that this had to be done immediately because the bill had not been passed in the Senate.

Honourable senators, there was a referendum under section 47.1. The referendum was conducted by an accounting firm; questionnaires were sent out to the farmers. They sent back their responses and 62 per cent of all wheat farmers said they wanted to keep the one-desk principle, and 51 per cent of the barley producers said they wanted to keep the Canadian Wheat Board.

Faced with the results of that survey, I suppose the government looked at it and said, "Well, if we follow through on the requirements of the law, we will not be successful in getting the consent of the farmers."

The final point is — and Senator Plett put this to the Canadian Wheat Board — there were irregularities with the voting, which the Canadian Wheat Board did not address in their answers to Senator Plett.

Those are the facts. It is also the fact that both sides in this argument said, as in paragraph 8:

> . . . the validity and effects of any legislation which might become law as a result of Bill C-18 are not in issue in the present Applications.

The conclusion of the court was that there was value in making this declaration of illegality, of saying that it is unlawful for the government to act as it did.

• (1740)

The Hon. the Speaker: Order, please. The honourable senator's 15 minutes have expired.

Senator Tardif: Five more minutes.

Senator Robichaud: Ten minutes.

The Hon. the Speaker: Honourable Senator Baker, are you asking for five minutes?

Senator Baker: Yes.

The Hon. the Speaker: Proceed.

Senator Baker: In other words, honourable senators, what will happen at the end of the day is perhaps speculative, but when you have a law and the law is changed contrary to that law, which affects you directly in some way, then you have recourse to the courts. You have redress in the courts.

If a government changes the rules and makes it retroactive or disobeys a law, then, of course, the person so affected will have the right to his or her day in court. I imagine that is what will happen.

Senator Brown: May I ask the Honourable Senator Baker a question?

Senator Baker: Yes. Depending on the question, I will decide whether or not I will answer it.

Senator Mercer: That is how it works around here.

Senator Brown: Would you please reread the sections before and after section 47.1 that you read a few minutes ago, please?

Senator Baker: Yes. Part IV of the Canadian Wheat Board Act starts with section 45, which has a heading, "Trading in wheat or wheat products," and it says, "Except as permitted under the regulations, no person other than the Corporation shall," and then there is a list of things: export, transport, sell, buy, et cetera.

Then, under section 46, "Regulations," it states: "The Governor in Council may make regulations . . ."

Then we then go to Part V, and it says:

> The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV . . .

Part IV is the monopoly. Part V says the minister cannot introduce a bill in whole or in part, unless

> . . . the Minister has consulted with the board about the exclusion or extension; and . . . the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister.

Hon. Wilfred P. Moore: I have a question for Honourable Senator Baker.

Senator Baker, if the minister goes ahead and does not conduct the plebiscite as provided for in the existing law, do you have any opinion as to how that would stack up vis-à-vis the Charter and whether or not any other doctrines might be violated?

Senator Baker: That is an interesting question. The doctrine of legitimate expectations and the doctrine of natural justice are encapsulated by section 7 of the Charter, fundamental justice. Every right and doctrine not specified in the Charter has been ruled by the Supreme Court of Canada many times to be encapsulated in section 7 of the Charter under fundamental justice. Therefore, one could make, in the future, a constitutional argument that the Charter has been violated.

For example, there is the doctrine of legitimate expectations. If you were a farmer, and you have become a part of the Canadian Wheat Board and planned your future in that way, that doctrine of legitimate expectations applies because the law says that the minister must do this, this and this before that law is changed. You would have recourse to the courts under that doctrine to the effect that your fundamental rights have been violated.

Senator Mercer: Shame.

An Hon. Senator: Question.

The Hon. the Speaker: I am afraid that Senator Baker's 15 minutes plus his extra five minutes have been exhausted.

An Hon. Senator: Given him another five.

(On motion of Senator Tardif, debate adjourned.)

[*Translation*]

BUSINESS OF THE SENATE

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, after discussion with the Deputy Leader of the Opposition, given the hour and the fact, I believe, that Senator Cowan will avail himself of his right to speak for 45 minutes on Bill C-10, and given that other people indicated that they wanted to speak and we are waiting, in any event, for the other place to send us Bill C-20 on fair representation, we would like to suggest that the Senate suspend immediately for a meal break and resume at 7:30 p.m.

[*English*]

The Hon. the Speaker: Honourable senators, the proposal is that the Deputy Leader of the Government and the Deputy Leader of the Opposition have been in consultation. Normally, the clock would be seen at 6 p.m., and we would come back at 8 p.m. The proposal is that under the variety of circumstances, we would suspend now to come back at 7:30, with a 15-minute bell that would begin sounding at 7:15.

Is there unanimous consent for that?

Hon. Senators: Agreed.

The Hon. the Speaker: It is so ordered, and the house now stands suspended until 7:30, with the bells ringing at 7:15.

(The sitting of the Senate was suspended.)

• (1930)

(The sitting of the Senate was resumed.)

CONSTITUTION ACT, 1987
ELECTORAL BOUNDARIES READJUSTMENT ACT
CANADA ELECTIONS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-20, An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act.

(Bill read first time.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

Hon. Claude Carignan: Honourable senators, with leave of the Senate and notwithstanding rule 57(1)(f), I move that the bill be read the second time later this day.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

(On motion of Senator Carignan, bill placed on the Orders of the Day for second reading later this day.)

SAFE STREETS AND COMMUNITIES BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Stewart Olsen, for the second reading of Bill C-10, An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I have spoken many times in this chamber about the importance of doing the job entrusted to us under the Constitution — carefully scrutinizing the government's legislative agenda, listening to Canadians who want to be heard, dispassionately reviewing the evidence, and ensuring that each bill that comes before us is the best that it can be. When appropriate, we amend bills. That has happened hundreds of times and the laws of Canada have been the better for it. Our guide must always be the public good.

Public policy should be grounded in the best evidence available as to what works and what does not work. That should always be our starting point. Let us begin by stating some straightforward facts. Crime rates in Canada are declining and have been doing so for 20 years. The homicide rate has dropped to its lowest level in 44 years, almost half a century.

When Senator Boisvenu spoke last week, he quoted statistics on youth crime. Let me refer him to the Statistics Canada 2010 crime statistics report which states:

> Similar to the trend in overall crime, the rate of crime committed by youth has generally been generally declining over the past decade. The 2010 youth crime rate fell 7% from the year before and was 11% lower than a decade ago.

Senator Boisvenu was focused particularly on youth crime in Quebec. Again, I refer to the report:

> Decreases in the severity of youth crime in 2010 were reported in every territory and province without exception. The youth CSI . . .

That is crime severity index:

> . . . was lowest in Quebec, followed by Prince Edward Island and British Columbia.

Evidently, honourable senators, our anti-crime policies have been working. Certainly, there is no epidemic of crime plaguing our streets, as Prime Minister Harper has seen fit to tell Canadians. Indeed, just recently Statistics Canada confirmed that in 2009, 93 per cent of Canadians felt satisfied with their personal safety from crime. This is consistent with the response the last time this information was collected, in 2004. It was 94 per cent in 2004 and 93 per cent in 2009.

Smart on crime; honesty about crime with Canadians and honest policies to combat crime — that is how governments have approached this issue in the past and it has produced policies that have worked for Canadians. The facts bear this out. The crime rate has declined and Canadians generally feel safe in their homes and communities.

Is there more to be done? Absolutely. Any crime is too much crime, but the evidence, the hard facts, are clear: Canadian criminal justice policies were on the right track.

The Harper government has proposed a radically different approach. I have an open mind, honourable senators. I am prepared and willing to be persuaded by evidence that this new approach is better than the one that has reduced crime to its lowest level in decades. Unfortunately, this government is not interested in evidence. The Minister of Justice himself has said dismissively, "We don't govern on the basis of statistics."

Honourable senators, this is deeply worrying. The justice minister is saying that the Harper government does not believe in evidence-based policy-making. The government's solution is to put more people in jail for longer periods of time.

Bill C-10 deals with the criminal law of Canada. It is our responsibility, our duty to Canadians, to demand that the government demonstrate, not with spin or appeals to fear or emotion, but with facts and evidence that these changes are necessary and appropriate, and that they will advance the government's stated agenda to make us all safer. However, the government has failed to produce a single piece of hard evidence that its proposed approach will work. Not a single piece! To the contrary, all of the evidence indicates that, in fact, this government's approach will not work to reduce crime. If anything, it will result in an increase in crime in the long run. No wonder they are quick to dismiss hard evidence and facts. No wonder they try so hard to convince Canadians to ignore the evidence.

The Harper government has crammed nine bills into this megabill. It chose the title "Safe Streets and Communities Act." The Harper government likes to make big claims in its titles to bills. However, we have seen in the past that the bill often has the exact opposite effect of its grand title.

The Federal Accountability Act, for example, ushered in the most unaccountable and closed era of government in Canada's history. The Tackling Violent Crime Act of 2008, as we predicted at the time, did not tackle violent crime. If it had, we would not need Bill C-10 today.

• (1940)

Honourable senators will recall the old British television series "Yes, Minister." There was a frighteningly insightful episode about this practice. Sir Humphrey, the supreme bureaucrat, said:

> I explained that we are calling the White Paper Open Government because you always dispose of the difficult bit in the title. It does less harm there than on the statute books. It is the law of Inverse Relevance: the less you intend to do about something, the more you have to keep talking about it.

Indeed, Canadians have suggested other descriptions of Bill C-10 as more accurate. The *Globe and Mail*'s editorial board on September 21 dubbed it "Prison is the answer to everything," with the headline "This obsession is not magnificent."

Dan Leger of the *Chronicle Herald* in my hometown of Halifax described it as "a misnamed hodgepodge of provisions, few of which make sense if the real goal is to reduce crime." He said, "It is such a sprawling mess of wrong-headed provisions that some future administration will need years to untangle it." The headline of that column summed up his views: "Crime bill: expensive, ineffective and entirely political."

Quebec Justice Minister Jean-Marc Fournier did not mince his words when he said:

> This isn't a tough-on-crime measure we're seeing today — it's a tough-on-democracy measure.

Bill C-10 relies heavily on the expanded use of mandatory minimum penalties. First, the evidence is clear: Mandatory minimum penalties do not work to deter crime. The Justice Minister himself recognized their limited value before he was a minister in the Harper government. Back in 1988, now Justice Minister Nicholson was vice-chair of the Justice and Solicitor General Committee in the other place. There was public pressure then for the increased use of mandatory minimum penalties, with the same cries we hear today that these penalties are required in order to effectively reduce criminal activity.

The committee, under the vice-chairmanship of Mr. Nicholson, canvassed the evidence and said that, except for certain incidents of repeat violent sexual offenders, it did not support the introduction of further minimum sentences. Mr. Nicholson was speaking the truth then and it is still the truth today. He has never addressed the contradiction between his position then and the government's position now.

Mandatory minimum penalties have been used in the United States for years. They have not worked there, and there is no evidence to suggest that they are any more effective in Canada. I invite honourable senators, particularly my friends on the other side, to look at rightoncrime.com, the website of the organization set up by prominent right-wing Conservatives in the United States, people like Newt Gingrich; former Governor Jeb Bush; Grover Norquist; William Bennett, the former U.S. drug czar; and Edwin Meese III, the former U.S. Attorney General. I will read one paragraph from their statement of principles:

> Conservatives are known for being tough on crime, but we must also be tough on criminal justice spending. That means demanding more cost-effective approaches that enhance public safety. A clear example is our reliance on prisons, which serve a critical role by incapacitating dangerous offenders and career criminals but are not the solution for every type of offender. And in some instances, they have the unintended consequence of hardening nonviolent, low-risk offenders — making them a greater risk to the public than when they entered.

Americans are taking the unusual step of speaking out to warn Canadians against repeating their criminal justice mistakes. Tracy Velazquez of the Washington-based Justice Policy Institute said this recently:

> We'd hate to see another country make the mistakes we had made 20 years ago with the mandatory minimum sentences, the harsher penalties for youth. We've seen the damage it has done to our country here, in terms of people's lives and the money that was wasted. We thought it would be a neighbourly gesture to convey our concerns about the direction this bill will take Canada.

She said in an interview published in *iPolitics* on October 19 that many experts who track international developments are struggling to understand why, when Canada's crime rate is at its lowest rate in decades, the federal government is pursuing polices that are not based on sound evidence. She told *iPolitics* that U.S. experience shows this path will lead to more incarceration and less public safety.

Less public safety, honourable senators; think of that. As the right-on-crime Conservatives have learned, incarceration can harden non-violent, low-risk offenders, making them a greater risk to the public when they come out, and unless every criminal receives life imprisonment, offenders will eventually get out of prison.

Bill C-10 will not produce safe streets and communities but precisely the opposite. This bill will make our streets and communities less safe for Canadians. Is that the legacy we want to leave for future generations?

The government keeps telling us that we are wrong to ask about the cost of this lock-'em-up spree. They ask, "What about the cost to victims of crime?" I ask, "Why are you not concerned about the many victims you are creating by this wrong-headed bill?"

One amendment to the bill is particularly troubling, honourable senators. The amendments to the Youth Criminal Justice Act would change the underlying principles of that act. The current act sets out a number of principles of the youth criminal justice

system and adds the statement that they are "in order to promote the long-term protection of the public." Bill C-10 would remove the reference to the long-term protection of the public. Think of that: A basic principle of legislative interpretation is that changes are made for a purpose. The Quebec Minister of Justice pleaded with the committee in the other place not to make this change and to keep that critical phrase in the act. The Conservative majority refused. The long-term protection of the Canadian public is not this government's concern.

No wonder the Harper government dismissed evidence that this bill will reduce public safety in the long run. They do not care about the long term and they have made that clear in the bill itself. The cost to future victims just like the cost to future generations of Canadian taxpayers are not this government's concern.

Let us make no mistake about it; this is an expensive policy the Harper government is foisting on Canadians. I noticed that the sponsor of the bill, Senator Runciman, made no mention of the cost of the Conservative's so-called tough on crime agenda when he spoke here recently. Small wonder. Federal spending alone on corrections has ballooned from $1.6 billion in 2005-06, when the Harper Conservatives took power, to $2.98 billion in 2010-11. That is an 86 per cent increase in federal spending, and it is expected that this will soon double.

The most recent estimate of the government's law and order agenda, one of the only estimates since the government has refused to provide a full costing, put the total cost to Canadians at $19 billion to build the prisons that would be needed and an extra $3.8 billion annually for maintenance and operational costs. This costing was done by the Quebec Institute for Socio-economic Research and Information.

Honourable senators, the real burden of these costs, including those from Bill C-10, will fall not on the federal government who came up with this expensive scheme, but on the provinces. The provinces want the federal government to pay. They say: This is your policy, not ours, you pay for it. What is the Harper government's response? I translate from the October 8 edition of *Le Devoir* as follows:

> The Conservative government feels no obligation to compensate provinces whose prison costs will rise once tougher crime laws are passed. In fact, the office of Public Safety Minister Vic Toews is urging the provinces to make cuts to social assistance, post-secondary education and social services in order to pay for their prisons.

• (1950)

This is a quote from Michael Patton, a spokesperson for Mr. Toews:

> Since our government has been in power, transfers to the provinces have increased 30%, or $12.7 billion. It's up to the individual provinces to allocate resources from the Canadian Social Transfer based on their own priorities.

Honourable senators, the Canadian Social Transfer is intended to fund the provinces' social programs, such as post-secondary education, social assistance and early childhood centres. These are the very sorts of programs the evidence demonstrates help to ensure that people do not engage in crime. In other words, they are the types of programs that actually prevent crime. By doing so, the provinces provide the best support possible to victims by preventing the crime in the first place. This government is telling the provinces they should take money away from those programs and instead use it to build and operate prisons.

Two provinces, Ontario and Quebec, have said flatly that they will not pay the increased costs resulting from Bill C-10. Other provinces have been less blunt, but apparently feel equally strongly. This is a federal policy and the cost should not be foisted on the provinces.

Tasha Kheiriddin, of the *National Post* — a paper not exactly known for its left-wing opinions — penned an article about this on November 8 headed "Ottawa plans, provinces pay." She wrote:

> Conservatives may talk the talk of decentralization and respecting federal-provincial jurisdictions. But with so much power to effect change across the country, it's proving far too tempting for Mr. Harper not to walk the walk.

Remember, honourable senators, there is only one taxpayer to pay the bills of the federal and provincial governments, yet no one knows — or if they do know, they will not say — what this imprisonment spree will actually cost. That is precisely why we have been pressing the government so hard on the costing of its criminal justice agenda. Remember, every dollar spent on building and operating prisons, federal or provincial, is a dollar less that is available for other priorities of Canadians, be they health care, education, Aboriginal housing or a multitude of other things.

It is simply not good enough, in my submission, for the government to accuse its critics of being soft on crime or somehow uncaring about the victims of crime. This government won the last election by promising careful management of the economy, yet it has presented this bill without being able to tell taxpayers what it will cost. Promise made, promise broken.

I want to speak briefly about the process of this bill. Senator LeBreton, the Leader of the Government in the Senate, said in this place on December 6:

> . . . there will be ample opportunity to study it when it is referred to committee. . . .

I take her at her word. I trust her statement reflects a realization by her government that the artificial deadline of 100 sitting days for this bill to pass Parliament was just plain silly. What magical event takes place after 100 days?

The justice minister referred to the fact that the committee in the other place heard from over 50 witnesses, suggesting somehow that this bill had been studied exhaustively and that everything that needed to be said had been said. Honourable senators, this is far from the truth.

The committee in the other place gave every witness five minutes to make a statement on this bill — a bill that is more than 100 pages long and combines 9 bills in one. That means each witness was allowed 30 seconds to comment on each bill, if they wished. That was across the board. Provincial ministers of justice were allotted five minutes. The various bar associations were allotted five minutes. Witness after witness was literally cut off in mid-sentence. Needless to say, the question and answer sessions with members and witnesses were strictly time limited, meaning that MPs were often unable to ask questions of more than one or two witnesses on each panel.

The Library of Parliament's legislative summary for Bill C-10 runs over 150 pages. The Canadian Bar Association submitted a brief that was 90 pages long. How do you summarize 90 pages in five minutes? That is not how Parliament should be passing laws, especially not far-reaching amendments to the criminal law which will certainly result in more Canadians losing their liberty.

Regretfully, the other place did not do a proper job with this bill. Members were not allowed to do their job. Let us do ours. Let us do away with this artificial, entirely unnecessary deadline. If there is an objective, serious, valid reason for it, then tell us, but no reason has been presented to date.

I hope our committee will be able to take a more reasonable approach to the study of this bill. Those who wish to be heard should be heard fully and properly. If they must be heard in panels, the panels should be organized thematically and not a hodgepodge of witnesses addressing totally different parts of the bill. I hope senators who attend the meetings have as much time as they require to question the witnesses.

Finally, I trust that this time the government will allow senators opposite to listen carefully to the merits of proposed amendments and then vote on those amendments. Many of us witnessed the embarrassing display in the other place, when detailed arguments were presented by opposition members in support of particular amendments, marshalling the evidence presented by witnesses before the committee, only to be flatly voted down by the majority Conservatives, and usually without any attempt to counter the opposition's arguments.

We saw the consequences of this. Irwin Cotler, my Liberal colleague in the other place, had proposed amendments to one part of the bill. They were amendments designed to improve the bill, to actually make it achieve what the government was trying to achieve, only to be voted down by the majority Conservatives. Mere days later, Public Safety Minister Vic Toews tried to introduce essentially the same amendments as those proposed by Mr. Cotler, only to be ruled out of order by the Speaker. In the other place the Speaker ruled that the amendments should have been introduced in committee. I expect those amendments will be tabled in our committee by the government. That is why the Senate exists. However, I wonder what other amendments should be made to the bill.

Professor Anthony Doob, a highly respected criminologist at the University of Toronto, appeared before the committee in the other place. In the brief presentation he was allowed to make, he drew the committee's attention to a provision that was frankly absurd in its result. It imposed a 9-month minimum sentence on a student living in a rented apartment, who grows a single marijuana plant so she can share marijuana with her boyfriend, but if she owned the apartment and were growing 150 plants then she would only face a 6-month mandatory minimum sentence. The Conservatives immediately said that was a drafting error and it was corrected at clause-by-clause consideration.

What other absurd provisions or drafting errors are in this mammoth bill? What will come to light in the course of a proper study? For it was seen that this was not the only bizarre result of the bill. The *National Post* had an article on September 23, highlighting a few of the strange mandatory minimums provided by Bill C-10. The article was headed, "Pot growers face more jail than rapists," and it pointed out:

> The legislation imposes one-year mandatory minimums for sexually assaulting a child, luring a child via the Internet or involving a child in bestiality. All three of these offences carry lighter automatic sentences than those for people running medium-sized grow-ops in rental properties or on someone else's land. A pedophile who gets a child to watch pornography with him, or a pervert exposing himself to kids at a playground, would receive a minimum 90-day sentence, half the term of a man convicted of growing six pot plants in his own home.
>
> The maximum sentence for growing marijuana would double from seven to 14 years, the same maximum applied to someone using a weapon during a child rape, and four years more than someone sexually assaulting a child without using a weapon.

Honourable senators, this is what happens when the legislature usurps the role of a judge. It is often said that the criminal law is a blunt instrument. It is made significantly blunter when it takes away judicial discretion.

• (2000)

Last week, Senator Andreychuk reminded this chamber of what Mr. Justice Dickson said:

> There is in Canada a separation of powers amongst the three branches of government — the legislature, the executive and the judiciary.

Our system of justice is built on a careful balancing of the roles divided among Parliament, judges, prosecutors and the police. This balance has evolved over centuries.

Honourable senators, mandatory minimum penalties throw this balance out of whack, and there is absolutely no clarity, or even forethought, as to what the new balance will look like.

Let me give you a concrete example. Justice Minister Nicholson likes to tell Canadians that the bill "is very specific — it targets drug traffickers." He said:

> These are individuals who are involved with organized crime. And in fact, there is quite a bit of violence attached to it.

I would welcome a bill that targets violent individuals involved with organized crime. The problem is that Bill C-10 is not nearly as specific as the justice minister suggests. The definition of "trafficking" — and Senator Baker has pointed this out to us previously — includes an 18-year-old student who offers to share a drug with a friend at a party. Simply offering — whether or not the other person accepts, and whether or not there is any money involved — is swept up in the definition of "trafficking."

Should the same mandatory minimum penalty apply to that teenager as would apply to a member of organized crime who is actively selling large quantities of drugs? Do Canadians really want those young people to go to prison?

The government's answer is: Do not be absurd; no one will actually charge a teenager in that situation.

In other words, the power is being taken away from the judge, who traditionally would look at the teenager before the court and assess what would be the appropriate way to deter him or her from drugs in the future. Instead, the power is being given to the prosecutor, who decides whether or not to proceed with a case against the teenager — or perhaps plead it down to something without a mandatory minimum penalty — or even to the police themselves, who decide whether or not to charge the person.

That is not how our system was designed to work. Crown prosecutors are not judges, and clearly police are not judges either. Do Canadians want to give this much power to the police and to prosecutors, instead of to impartial judges?

Our criminal court system is already overburdened, "critically overburdened," as the President of the Canadian Association of Crown Counsel told the committee in the other place. In his testimony, he said:

> As it is currently resourced, the criminal justice system cannot fully and consistently carry into effect many of our criminal laws. That's the context for these amendments.
>
> We expect that the systemic impact on the ground with respect to these changes . . .

And he was referring to Bill C-10.

> . . . will be an increase of overall workload, substantially because the trial rate will increase. In the absence of significant tangible new resources to support this new workload, these changes will exacerbate what is already a dangerous situation of work overload.

What does this mean, honourable senators? It means that cases that should proceed to trial will not. They will be pleaded down or not proceeded with at all, all behind closed doors. It means that the criminal law becomes a sham — one thing on the books and another thing in practice. The law will likely be different depending on where you live — strictly enforced in some communities and quietly ignored in others. Live in one community and you will go to prison for certain acts that, if you lived elsewhere in Canada, would not even merit a comment from the police.

Is this "tough on crime"? Is this any Canadian's idea of a real "law and order" agenda?

The government's usual response is to ignore the question and repeat their mantra: They are concerned with victims. Honourable senators, we are all concerned about victims of crime — but victims of crime need serious help, not illusory solutions.

Steve Sullivan was the Federal Ombudsman for Victims of Crime, appointed by the Harper government. He has strong views about Bill C-10. He noted that indeed the bill contains some provisions that victims' advocates have been calling for — but added that they were not new; they were first introduced "through similar amendments by the Liberal government in 2005."

However, with respect to the overall impact of Bill C-10, Mr. Sullivan said:

> I have yet to see — and I've attended some of the hearings — any evidence that would convince me that this bill will actually make victims safer or society safer in the long run. I think the challenge or concern I have with the bill is that it is being promoted as a pillar of the commitment to victims of crime, when we see — without the provisions I talked about — very little that will change the day-to-day circumstances of those people who are victimized by crime.

That was his testimony on October 27.

He pointed out that in his experience — and he has devoted his life to working with victims of crime — victims seeking justice want to be included throughout the process. He said that with victim impact statements, for example, one of the most important factors with regard to satisfaction is whether the judge acknowledges the harm done to a victim, even if the sentence might not be what he or she thought it should be.

Mr. Sullivan asked how victims will be helped if the system is so overloaded that there are more plea bargains and more stays of proceedings. He raises a good question.

He concluded:

> I would rather see us take scarce resources and provide them to communities and to programs that are actually going to help the majority of victims heal and begin that healing process. I'm afraid this bill is not going to do that very well.

The government has defended this bill on the grounds that it helps victims of crime, and yet their own Ombudsman for Victims of Crime told members in the other place that the bill does not help victims, and that the only provisions that actually help victims were ones introduced in 2005.

Honourable senators, I wish to bring particular attention to the provisions amending the Youth Criminal Justice Act, because they have been highly controversial and heavily criticized.

The Quebec Minister of Justice, Mr. Jean-Marc Fournier, took the unusual step of appearing before the committee in the other place to express the Quebec government's strong objection to those, and other, provisions of Bill C-10. He noted that his government takes this step only "exceptionally," and said it was "the seriousness of the situation" that explained his doing so; that is, coming before the committee.

Mr. Fournier told the committee in the other place:

> Bill C-10 will actually encourage repeat offences and increase the number of victims. Many studies, including some by the federal government, have demonstrated that prison sentences do not reduce crime or recidivism. Quite the opposite, in fact. Prison may actually serve as crime school, thus encouraging inmates to reoffend. One thing is certain, an effective, long-term anti-crime strategy cannot focus solely on sending offenders to prison. At some point, offenders are released from prison and return to society. Any long-term anti-crime initiative requires special focus on their reintegration into the community. A strategy purely focused on locking up offenders for a time is nothing more than a temporary, superficial solution.

These are Minister Fournier's words, not mine.

He continued:

> It is a springboard to more crime. However, if you teach a young offender acceptable behaviour, you can stop them repeating the same mistakes. Failing to provide offenders with instruction or a follow-up on how to behave in society is tantamount to encouraging them to offend again. The solutions proposed in Bill C-10 do not meet the stated goal of making the public safer. They also fail to address effective penalties for offenders or the prevention of crime and recidivism.

His statement focused in particular on the provisions of the bill relating to youth criminal justice. Quebec, of course, has long applied an approach toward young offenders that focuses on re-education, rehabilitation and social reintegration, instead of imprisonment. This does not exclude victims; to the contrary, Minister Fournier pointed out that:

> . . . the rehabilitation approach provides a greater role for victims than does the custodial sentence model. Indeed, young offender initiatives must consider the best interests of victims, the impact of the crime on them and ensure their rights and dignity are respected. Victims have the right to be informed of steps taken to bring young offenders to recognize the harm caused to their victims. Where possible, youth offenders are required to submit to a process of reparation.

As he told the other place: "This way of dealing with young offenders works. Quebec has the lowest crime rate in Canada."

That applies to crime generally, and to youth crime in particular.

• (2010)

Minister Fournier came to Ottawa again, this time to meet with Justice Minister Nicholson, and discuss privately and quietly possible changes to Bill C-10. He left that meeting deeply disappointed. In his words:

> I came here today and the door was closed on every issue.

He asked for the evidence which the Conservatives were relying on in proposing these far-reaching changes to the criminal law. He said:

> I asked, "'where are the studies you've got about the changes on young offenders?"

The answer from the minister: "I've received personal observations."

Mr. Fournier said, quite reasonably in my opinion, "I'm just asking to put the studies on the table."

Honourable senators, after this the government did put evidence on the table. One report, from my own province of Nova Scotia, was prepared by retired Justice Merlin Nunn in 2005 on youth criminal justice. Indeed, Prime Minister Harper has repeatedly cited Justice Nunn's work as tacit support for his changes to the law.

However, honourable senators, Justice Nunn himself has since gone on the record as saying that Bill C-10 goes too far.

Senator Cordy: That is right.

Senator Cowan: He said, "I don't like it. I would agree with the Quebec position."

In an interview in 2008 Justice Nunn said that less is more when it comes to sentencing minors. "Harsh penalties do not deter crime." he told the Canadian Press.

> There is no evidence anywhere in North America that I know of that keeping people in custody longer, punishing them longer, has any fruitful effects for society.

With respect to young offenders Justice Nunn said:

> Custody should be the last-ditch thing for a child . . . I have no doubt that some of the kids who get convicted have to be held in custody for some period of time — but not lock the door and put away the key.
>
> Instead of rehabilitating him, you've got a kid that may be 10 times worse than when he went in.

Honourable senators, there are serious issues around the proposed changes to the Youth Criminal Justice Act. Will putting young people in jail for long periods of time increase public safety?

Some Hon. Senators: No.

Senator Cowan: I am looking forward to Senator Duffy's contribution to this debate. A debate between him and Justice Nunn will be most interesting.

Will putting more young people in jail for longer periods of time increase public safety?

Law professor Nicholas Bala, who has worked on child and youth issues for over 30 years, pointed out that young people placed in detention — and this applies especially to pre-trial detention — are especially vulnerable to being recruited into youth gangs, which may result in a spiralling increase in their offending. This is exactly the opposite effect to what the government is hoping to achieve.

What deters young people from engaging in criminal activity and, therefore, increases public safety? As Justice Nunn said clearly, and all of the evidence that I am aware of supports his view, "Harsh penalties simply do not deter crime." However, re-education, rehabilitation and social reintegration, as pursued in Quebec, does work.

What is the evidence to support the new radical approach contained in Bill C-10? Does broadcasting the names of young offenders, as proposed in Bill C-10, help young people become responsible young adults?

An Hon. Senator: No.

Senator Cowan: Or does it actually, as Professor Bala and others have suggested, make their rehabilitation and reintegration into society much more difficult?

These concerns cut across much of Bill C-10 because I believe the government has failed to understand that basic truth, as I mentioned earlier, that the criminal law is a very blunt instrument.

The Harper government says that it wants to crack down on repeat violent offenders, sexual predators and organized crime trafficking drugs to our children, but the bill they have drafted goes much further.

We know that our prisons are disproportionately filled with people suffering from mental illness. The Correctional Investigator of Canada just issued his annual report for 2010-11. The statistics are startling. Internal Correctional Service of Canada data suggests that 38 per cent of men admitted to federal penitentiaries require further assessment to determine if they have mental health needs. For women, the statistics are even worse. More than 50 per cent require further mental health assessment. Honourable senators, the report goes on to say that these, in all likelihood, are lower than the actual figures, as mental illness is typically underreported in the prison environment.

Let me be clear, honourable senators: In my opinion, Bill C-10 will make this terrible situation worse, not better.

Here is what the correctional investigator, Mr. Howard Sapers, said in his report:

> Incarcerating persons with mental health problems in conditions and environments that are poorly suited to meet their needs promotes neither public safety nor rehabilitative objectives. Simply put, there is not enough capacity, resources or professionals to meet the increased demands being placed on a system that was never intended to cope with such a profoundly ill population.

Mr. Sapers gave an interview to *The Hill Times* about the report and the anticipated impact of Bill C-10 on this already bad situation. He described how treatment space, program space, is now being used in some cases to house inmates. This means that space is not available to deliver the treatment and programs needed. He said that Bill C-10 is only going to compound this problem.

Let me read to you a short excerpt from that article of December 8:

> Mr. Sapers said the pressure inside prisons and budget limits have already sharply limited access to drug rehabilitation programs and other courses, including basic instruction in literacy, that are supposed to be available to federal inmates.
>
> 'I can give you examples, particularly in women's prisons right across the country, where program space, interview space, office space is being used for housing because those centres are so overcrowded.'

A letter to the editor appeared in *The Globe and Mail* last week, on December 8. It was striking to me, not because it was unusual but exactly the reverse. I believe the experience described in the letter is all too typical of what is happening in our prisons and jails. Here is what it said:

> My mentally ill brother was recently released after 90 days in a provincial jail. This is just the latest of a string of incarcerations for minor offences, so another $15,000 of taxpayer funds was wasted locking him up. As usual, he emerged just as sick, due to lack of access to proper medication and support. Yet when he tries to access critical mental-health services, he is put on wait lists. And when he goes to a hospital while in full-blown psychosis, he is turned away because there is "no room at the inn."
>
> My brother is an intelligent, hard-working person when he is healthy — capable of contributing to society and paying taxes if provided with proper treatment and supports. What a colossal waste of human dignity, tax dollars and social opportunity.
>
> In this era of fixation on reducing costs, I wish my government would stop wasting dollars and lives by jailing the mentally ill. Treating them for the illness is the more compassionate, rational and socially responsible option.

The letter was signed by Lorraine Land from Toronto.

Let us be clear, honourable senators, Bill C-10, which will be expensive for all levels of government, will mean there will be less money available for the services that our mentally ill citizens require, so the situation will become much worse.

Honourable senators, Ms. Land's brother is not a hardened criminal. What possible sense does it make to lock up our mentally ill citizens in prisons? Yet Bill C-10 will take away the ability of our judges to look at the accused person for who he or she is. Our judges will no longer have the ability, so fundamental to our system of justice, to judge the person in front of him or her. That is what mandatory minimum penalties do: They remove discretion from the judge.

Sitting here in this chamber, how can we decide what is best for Ms. Land's brother and that person's sister or another one's mother or son? We cannot, colleagues, yet that is what we are doing when, as legislators, we usurp the role of judicial discretion, as we are being asked to do in this bill.

Aboriginal Canadians are also locked up in our prison system in numbers vastly disproportionate to their population. Some of my colleagues will speak about the impact of Bill C-10 on our Aboriginal citizens, but let me question the wisdom of telling judges that they must give absolutely the same mandatory minimum penalty to a member of organized crime who trafficks in drugs as they do to someone raised in poverty in a First Nation community, with terrible housing and no running water, who turns to drugs and shares them with a friend in the same situation. Are drugs the answer? No, but neither is prison.

• (2020)

This government was recently taken to task by the Federal Court of Canada for conduct found to be an affront to the rule of law. Honourable senators, I am concerned that with legislation such as Bill C-10, we are turning the rule of law on its head. In an excess of hubris, this government is increasingly trying to take over the role of the judiciary, a kind of jurisdictional creep, if you like. The Harper government's immediate dismissal of last week's decision about the Canadian Wheat Board and Bill C-18 demonstrates that it refuses to listen to any decision of the courts that it does not agree with. With bills like Bill C-10, it is trying to stop such decisions before they can be made by taking away the ability of Canadian judges to exercise their discretion and judge the way they are trained to do and, frankly, expected to do in our system of law.

This is a 100-page bill. There are many issues that need to be studied. I know that a number of my colleagues plan to raise some of them in this debate. I have only been able to touch briefly on a few, but I want to return for a moment to the timing question.

As I said earlier, I trust there will be no constraints in terms of hearing of witnesses or demands on the committee to report back the bill to this chamber before it has had an opportunity to properly study all aspects of the bill. The Minister of Justice has said on numerous occasions that the component parts of this bill have been introduced in Parliament before and studied extensively. I question whether a study by members of one Parliament could, can or should be said to constitute studies by members of a new Parliament, especially after an election that saw fully one third of the members of the other place replaced, but that is an issue for the other place.

Honourable senators, most of the bills bundled into Bill C-10 have not previously been before us here in the Senate. This will be our first time examining these provisions. As I have indicated, bundling them together has highlighted bizarre inconsistencies that need to be explored, such as heavy penalties imposed under one part versus lighter penalties imposed under another for offences that would seem to be far more reprehensible.

Honourable senators, Bill C-10 demands serious, careful, critical scrutiny. On this side, we find ourselves unable to support Bill C-10 in its current form. We would be prepared to support some parts and to work with the government to improve other parts, but because the government has demonstrated clearly in the other place that it is not interested in accepting or even considering reasonable amendments proposed by the opposition, we have no alternative but to oppose the bill at second reading. The government has, unfortunately, bundled the good with the bad.

I want to quote from two highly respected Canadians who each bring considerable expertise and concrete experience to this matter.

The first is David Daubney, who served in the other place as a Progressive Conservative member of Parliament. He developed extensive expertise in sentencing policy while chairing the Justice Committee in the other place, during which time he worked closely with now Justice Minister Nicholson. He then joined the Justice Department to continue his work on sentencing policy and other aspects of criminal law policy. He gave a rare and, in my view, courageous interview the other day, saying that he felt compelled to issue a warning that federal policies threaten to undo decades of correctional research and reform. He is concerned that we may go back to the era of riots in prisons. In his words:

> It is kind of sad that I have to do this, but somebody has to take the risk of talking. . . . I feel sad for my colleagues who are still there. It was clear the government wasn't interested in what the research said or in evidence that was quite convincingly set out.

The other commentator is Alex Himelfarb, the former Clerk of the Privy Council. He has been writing extensively about the Harper government's omnibus crime bill. He spent much of his public service career in the justice sector, in what used to be called the Ministry of the Solicitor General, now Public Safety, at the Justice Department and at the National Parole Board. He entitled one article about the omnibus crime bill, "A Meaner Canada: Junk Politics and the Omnibus Crime Bill." Most recently, on December 7, after Bill C-10 had passed the other place, Mr. Himelfarb wrote a piece called, "A Bad Day: What Now?"

He presented a number of cogent arguments for why opponents of the bill should persist in making their case. His final arguments were:

> In fighting this kind of legislation we are also fighting for a different kind of politics.
>
> Who of us isn't sometimes afraid, especially for our kids, often angry and horrified at some of the terrible crimes we see on the news, and moved by the suffering of victims and their families. And we know our own frailties, that we can confuse justice and revenge, that our anger can blot out the evidence, that we sometimes lash out and act against our own best interests.
>
> Fighting against this punitive bill is fighting against a politics that exploits our frailties rather than appealing to what is best in us.
>
> And fighting against bad policy is good for the soul.

Honourable senators, we should all look to our souls when contemplating where Bill C-10 is destined to lead us and our country. Instead of approaching criminal justice reform with evidence-based proposals, the Harper government has, once again, been blinded by its ideology, and it is foisting on Canadians a collection of ill-advised, misguided and costly measures that will not achieve the government's stated objective of making Canadians and their communities safer.

As the lead editorial in yesterday's *Globe and Mail* concluded so succinctly, "At some point, government needs to take the risk of listening."

Some Hon. Senators: Hear, hear!

An Hon. Senator: Bravo!

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Would the senator accept a question?

Senator Cowan: Certainly.

Senator Boisvenu: I thank Senator Cowan for his very commendable speech.

I would have liked you to have spoken 99 per cent of the time for the victims and 1 per cent of the time for the criminals. You spoke 99 per cent of the time for the criminals and 1 per cent of the time for the victims. We note, therefore, that the Liberal Party stands up more for the rights of criminals and the Conservative Party stands up more for the rights of victims.

Normally, when preparing a study, we use credible data. I have in my hands the IRIS study that you mentioned on the cost of the system. I will point out three fundamental errors in this document and then ask you a question.

The first monumental error in this study, which I would rather call a political and economic essay, is the following: it says that 27 new prisons will be built in Canada, which would practically double the number of prisons. In fact, improvements will be made to 27 facilities. Investments will be made in 27 of 56 prisons. They consider this to be 27 new prisons.

The other monumental error is that, in 2006, the Government of Quebec announced major investments in the Quebec prison system because in 1995 they closed five prisons, by 2001 the prisons were overpopulated, and, in 2006, Mr. Dupuis said "we will invest millions" — more than $150 million — in Quebec prisons. IRIS included the 2006 Quebec construction project when considering Bill C-10.

The third professional error — it is written right there in the document, and I encourage you to read it if you have not done so — is that the authors state, "Our analysis is based on our research conducted on the Internet. However, we were unable to verify all the data to ensure their accuracy."

If the study is based in part on documents that are inaccurate and false, how can we believe that the information as a whole that you have collected for the study is accurate?

• (2030)

[*English*]

Senator Cowan: That is the very thing the honourable senator will want to explore at the committee hearings. I did not author the report. The honourable senator can ensure that the authors appear before the committee, and he will have adequate opportunity to explore that report with them. They are the authors of it, and they will have to back it up. That is what the hearings are for.

The main point I was trying to make was that the evidence in Canada and elsewhere has shown that mandatory minimum sentences simply do not work. Simply putting more people in jail for longer periods of time does not make us safer. That is the evidence. There is no evidence to the contrary that I am aware of, honourable senators.

On the specific point the honourable senator makes on that study, I only read a translation of portions of it. I think he should ensure the authors are brought before the committee, and he has a chance to examine them and to ensure he is satisfied either that they are wrong or that he is wrong. I think that is what the honourable senator should do.

[*Translation*]

Senator Boisvenu: I have a supplementary question.

Your submission was very good and quite substantive in terms of information, but it was not very credible. Minister Dupuis came to Ottawa and asked the government to provide studies and analyses. If we gather those same analyses from Minister Dupuis' office they will show that the crime rate in Quebec is on the rise and that the youth crime rate is on the rise. How can you give any credibility to Mr. Dupuis' testimony?

[*English*]

Senator Cowan: The honourable senator comes from Quebec. His own Minister of Justice came to Ottawa and said precisely what I said in my speech.

An Hon. Senator: Oh, oh!

Senator Cowan: Senator Brazeau will have a chance. Any time he wishes to participate, he can stand on his hind feet instead of sitting there yapping in the back row.

An Hon. Senator: Show some respect!

Senator Cowan: As I understand it, the Quebec Minister of Justice came to Ottawa, and his view is as I think I represented in my speech. He said that the approach that Quebec governments have taken in the past of less incarceration and more rehabilitation has worked, and that is why the crime rates in Quebec are lower than they are in the rest of the country. Those are his words. That is what he said, and I accepted it because it seems to me that that was consistent with the evidence I have read and heard elsewhere in the country.

Again, I am sure the minister will be appearing before the committee, and the honourable senator should put those questions to him because those are his views, not mine.

Hon. David Tkachuk: Honourable senators, I would like to say a few words about Bill C-10, the Safe Streets and Communities Act.

The Conservative government has placed on the table a bill to deal with criminal elements that are a threat to our safety and our communities' safety. This has been part of our agenda since well before the election of 2006, when we won our first minority government. It will come as no surprise to any of you that I want to speak particularly on the Justice for Victims of Terrorism Act, which has been part of my agenda since 2005 and the government's since the 2008 election.

As the sponsor of the bill, Senator Runciman noted in his speech that this act will allow civil suits against the sponsors of terror. As terror victims recently testified before the House of Commons Justice Committee:

> These suits can hold terror sponsors accountable by allowing seizure of their assets, exposing them to public scrutiny and preventing them from accessing Canada's financial system.
>
> Unlike suicide bombers and other front line terrorists, the financiers and facilitators of terrorism fear transparency and exposure and are rendered vulnerable to both through civil litigation of this sort. Put simply, we can help stop the flow of blood by stopping the flow of money.

It is hard for me to believe that it was seven years ago that CCAT, the Canadian Coalition against Terror, approached MP Stockwell Day and me, both then in opposition, to work on this measure for the first time. This was the beginning of our long journey with Canadian terror victims that is finally nearing its destination. During five tumultuous years of minority government, our party continued to work closely with victims on this legislation, legislation that fell victim again and again to the chronic instability of Parliament during that period of minority rule.

In fact, since 2005, parliamentarians have introduced versions of this bill no less than ten times, including three government bills of which Bill C-10 is only the most recent iteration. I commend the Conservative government for acting so quickly to bring the Justice for Victims of Terrorism Act forward as part of Bill C-10. It was Stockwell Day who first introduced it in the house, Bill C-367 and Bill C-394 in 2005, and it was MP Nina Grewal who brought it forward again as Bill C-346 in 2006. I myself introduced previous versions of this bill five times in the Senate since 2005.

By saying this, I do not want to take anything away from our Liberal colleagues here or in the other place. The Justice for Victims of Terrorism Act is one aspect of Bill C-10 that has and always has had all-party support. In fact, it was a Liberal who correctly described it as transformative and historic. Although each iteration of this act, the JVTA, has been modified and improved, honourable senators from both sides contributed immensely to that, both in committee and in this chamber. Under the leadership of Senator Fraser, the Standing Senate Committee on Legal and Constitutional Affairs had hearings on this bill, and she did tremendous work, along with all members, especially her and of course Senator Baker.

I am proud to have been able to outline the bill's history, but now it is time to launch its future. It is time to pass it into law, and I encourage all members of this house to join us in support of Bill C-10. Canadian terror victims have waited long enough, and it is time for us to act.

I want to turn for a minute to the bill as a whole. As Senator Runciman indicated in his speech here last week, Bill C-10 gathers together under one roof separate but related pieces of legislation that were introduced individually in preceding sessions of Parliament. It bears repeating that each of these has been reviewed and discussed at length, either in the house or in the Senate, in committee, and all of the above. None of them were passed, however, and that explains why they are included together in this omnibus bill. Canadians voted this time to give the Conservative Party a majority, and that decision was based on a record that included tough-on-crime legislation, legislation that is long overdue and legislation that has as its overriding theme throughout, defending the rights of the victim in society.

The theme, however, has been buried by the near constant references, and I want to spend some time on this part, on the other side and in *The Globe and Mail* to the erroneous conception that this bill is all about building prisons. We have heard about that in Question Period here. We have heard about it endlessly from Liberals across the aisle. In his speech on second reading in the house, the Liberal critic for Bill C-10 focused almost the whole of his thankfully brief speech on the notion that this government introduced a 152-page bill in order to build more prisons. That is right; it is nothing but a 152-page blueprint for prisons.

The theme has carried over into this place. Bill C-10 had not even reached us, but Liberal senators were clamouring over each other to have their say, bemoaning the fact that we are going to build more prisons. This has been the mantra. To paraphrase Mark Twain, a misbegotten fact can travel halfway around the world while the truth is putting on its shoes.

Let me quote from a recent source, a source that reveals the Liberals' mendacity on this issue. It is a House of Commons report that was issued by the Public Safety Committee in December 2010, exactly one year ago this month. The report, and I commend all honourable senators to read it, is entitled *Mental Health and Drug and Alcohol Addiction in the Federal Correctional Prison System*. It was focused on mental health but came to some other conclusions as well. On page 44 of that report, the committee wrote:

> During its visits to federal institutions, the Committee noted the frequently poor conditions in which CSC staff work and federal offenders are detained, mainly as a result of the obsolescence of correctional institutions. Of the 57 institutions operated by CSC, a good many were built in the 1800s and early 1900s—Kingston (1832), Dorchester (1880), Saskatchewan (1911), Stony Mountain and Collins Bay (1920-1930)—or in the mid-1900s—Joyceville (1950) and Archambault (1960s). Only four correctional institutions have been built since the mid-1990s. The average age of the institutions is about 45 years.

• (2040)

In other words, these places are falling apart, honourable senators. They are not for habitation. They are overcrowded, and supposed humane Liberals are proposing that we continue to allow prisoners to live in inhumane conditions, 19th century conditions — conditions that the report says are a hindrance to modern correctional programs. The other side is talking about correctional programs when they know full well that the correctional programs cannot be instituted in buildings and prisons that were built 100 to 125 years ago.

The report itself says that the conditions are a hindrance to modern correctional programs and services and pose a threat to staff and inmates alike. This has been conveniently lost on the Liberals and the media in their discussion of Bill C-10.

The Liberal bombast flies in the face of what their caucus colleagues who sat on the committee recommended a year ago. They made these recommendations in this regard, and I will read them to you.

Recommendation 36: That the federal government support the renewal and modernization of the modern correctional systems' aging infrastructure.

Recommendation No. 37: When building new facilities, that Correctional Service Canada provide toilets and windows in every cell with access to sunlight and fresh air where possible.

Let me read that again: that Correctional Service provide toilets and windows in every cell with access to sunlight and fresh air where possible.

Imagine that.

Recommendation No. 38: When new infrastructure is built, that Correctional Service Canada ensure that therapeutic considerations are taken into account. That is exactly what we are trying to do.

This report was written and tabled before a Conservative majority government was elected. As a matter of fact, we were a minority on the committee.

Let us see who was on that committee: Mark Holland, a recently defeated Liberal, was vice-chair. Andrew Kania, a recently defeated Liberal, was also a member. Bloc members, Maria Mourani and Roger Gaudet — they were defeated, too. Don Davies, an NDP member, was vice-chair. Other Liberals who participated in that study included Gerard Kennedy, Siobhán Coady, Joe Volpe and Bonnie Crombie, all of whom went down in defeat in the last election, thankfully. What makes the Liberal arguments in this place so shameful is that they know the truth. Their own members know the truth and they just cannot stop themselves from avoiding it in a discussion of this issue. No wonder the Liberal members who participated in the committee all went down to defeat.

Honourable senators, the simple fact is that not one person in this country will go to prison who has not been found guilty of a serious offence. Logic will tell you, however, that rational individuals think about their own consequences. Everyone here who has kids will at one time in their lives have told them to think about the consequences of their actions. It is wise advice and those who ignore it do so at their peril. Those who commit serious and violent offences do so not only at their peril but at the peril of their victims. That is why the consequences are so severe and that is why they should be so severe. I firmly believe that the end result will be that there will be less crime and fewer people going to jail.

What about the cost of the crime to the victims? There is not a word on that from the Liberals. In 2008, it amounted to $14.3 billion, even though the third party costs and costs to relatives and friends or to others who were hurt and threatened in the commission of the crime amounted to an estimated $2 billion. Victims, their family and friends pay to the tune of $16.4 billion, but you never hear a word about that from those on the other side. You will hear it from us because our focus is on reducing the price of victims in society as a whole to pay for violent crime.

POINT OF ORDER—SPEAKER'S RULING RESERVED

Hon. Joan Fraser: Honourable senators, on a point of order.

The Hon. the Speaker: Senator Fraser.

Senator Fraser: Honourable senators, in his truly splendid and impassioned flights, my friend Senator Tkachuk — I will assume he got carried away — referred to "mendacity" as a characteristic of my party. I believe it is well established that in parliamentary

language one is not supposed to call people liars. It is okay that he accused us of bombast, of having conveniently lost some facts, even avoiding the truth. All of that is fine, but if we are going to get into the business of calling people liars, Your Honour, we are heading down a very slippery slope.

The Hon. the Speaker: On this point of order?

Hon. Michael Duffy: On this point of order, is the word "hypocrite" parliamentary?

The Hon. the Speaker: Honourable senators, I will take this whole matter under advisement.

Continuing debate, the Honourable Senator Hervieux-Payette.

[*Translation*]

Hon. Céline Hervieux-Payette: Honourable senators, the Conservative government is proving once again, by introducing Bill C-10, which it calls the Safe Streets and Communities Act, that in matters of justice, it is only motivated by ideology and fear-mongering. There is no rational basis worthy of the name to explain the Conservative initiative to increase the number of automatic sentences, as our leader mentioned, and make the Youth Criminal Justice Act more repressive.

Instead of relying on studies by experts on issues related to Bill C-10, the Conservative government prefers, in a spirit more partisan than ever, to move forward with its omnibus bill. In keeping its electoral promise to introduce this rather voluminous bill in the first 100 days following its election, the Conservative regime knew full well that legal, social and medical stakeholders would have very little time to submit written opinions and less than five minutes to present them.

Since crime in Canada is at its lowest rate since 1973, it is completely absurd and irresponsible for the government to introduce such a bill. Lower crime rates are due in large part to the existing sentencing system, which has found a fair balance between punishment, deterrence and the rehabilitation of offenders. The Conservative government's obsession with law and order only shows the flagrant disparity between the real needs regarding the sentencing of offenders, and prevention of crime and recidivism, and the government's proposed solutions. Not only is the Conservative government not considering statistics that are recognized across Canada, but it is also disregarding the advice of experts in the field.

In his testimony on November 1, 2011, Quebec's justice minister, Jean-Marc Fournier, said that the Conservative government's excessive use of imprisonment as punishment was not good. I quote:

> One thing is certain, to combat crime effectively and in the long term, we cannot limit ourselves to imprisoning offenders. By definition, the time will come when the criminal is released from prison and returns to society. Combating crime in the long term means specifically focusing on reintegration into the community.

But what Bill C-10 proposes is the complete opposite of this. A Public Safety Canada study on the effect of recidivism confirmed that imprisonment was ineffective because it did not lower recidivism rates among criminals.

• (2050)

Two of the three conclusions were as follows — and I am talking about a federal department. First, for most offenders, prisons do not reduce recidivism. To argue for expanding the use of imprisonment in order to deter criminal behaviour is without empirical support. The use of imprisonment may be reserved for purposes of retribution and the selective incapacitation of society's highest risk offenders. And the third recommendation states: evidence from other sources suggests more effective alternatives to reducing recidivism than imprisonment. Offender treatment programs have been more effective in reducing criminal behaviour than increasing the punishment for criminal acts.

The proposals in Bill C-10 fly in the face of those two conclusions, because the bill focuses on imprisonment instead of on protecting the public in the long term. The omnibus bill lumps together nine bills proposing reforms that were debated in the previous Parliament, including the one on the youth criminal justice system, which is a departure from the vision of protecting the public through reintegration that Canada has supported since 1908. The part of the bill dealing with young offenders imposes a number of legal principles that will force courts to render their decisions in a spirit of punishment, rather than rehabilitation.

The strengthening of the Young Offenders Act proposed by Bill C-10 is essentially the same as the former Bill C-4, introduced by the same government on March 16, 2010. When he introduced Bill C-4, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts, the federal Minister of Justice at the time, Rob Nicholson, said he drew inspiration primarily from two things: the report prepared by former Justice Merlin Nunn and the Sébastien Lacasse case. I would like to briefly revisit those two things.

First, in his report entitled *Spiralling Out of Control: Lessons Learned From a Boy in Trouble*, Justice Nunn presented 34 recommendations regarding court administration, delays, Crown attorneys, police and a number of other aspects of the youth justice system in Nova Scotia.

In its brief on Bill C-10, the Canadian Bar Association focused on three recommendations in the Nunn report on the Youth Criminal Justice Act: first, a recommendation that protection of the public be made one of the primary goals of the Youth Criminal Justice Act (not the only primary goal); second, a recommendation that proposed a new definition of "violent offence" as conduct that endangers or is likely to endanger life or safety; and third, a recommendation that dealt with a pattern of findings of offences in considering pre-charge detention.

I share the Canadian Bar Association's view that the provisions of Bill C-10 go far beyond Justice Nunn's recommendations. In fact, Justice Nunn virulently attacked the Conservative government and Bill C-4.

In an article that appeared in the September 30, 2008 issue of *The Record*, Justice Nunn wrote:

> [T]here's no evidence anywhere in North America that I know of that keeping people in custody longer, punishing them longer, has any fruitful effects for society. . . . Custody should be the last ditch thing for a child.

He further stated with regard to the Conservatives:

> They have gone beyond what I did, and beyond the philosophy I accepted . . . I don't think it's wise.

The fact that the Conservative minister did not follow Justice Nunn's advice with regard to the Youth Criminal Justice Act is not surprising. Since when has the Conservative government ever relied on the advice of experts or facts when creating legislation?

Despite the Conservatives' well-known reluctance to do so, when the Quebec Minister of Justice, Jean-Marc Fournier, recently appeared before a parliamentary committee, he invited the federal government to take inspiration from experts in youth criminal justice. He said:

> Please listen to those stakeholders, who over the past 40 years, have developed the studies, science and statistics to enable them to rehabilitate young offenders. Should you choose to reject their expertise and science, the onus is on you to support your proposals with serious studies and analysis.

The second motivating factor behind the introduction of Bill C-4 was to pay tribute to a young man named Sébastien Lacasse, who was beaten to death in 2004 by a group of youths. The government named the bill in his honour: Sébastien's Law (Protecting the Public from Violent Young Offenders). As the Canadian Bar Association indicated in its brief, this case never should have been exploited by the government since it appeals to emotions and a bill, honourable senators, should always have an objective title and reflect the realism of the situation. What is more, the outcome of this case is inconsistent with the need to make radical changes to the Youth Criminal Justice Act since the youth who killed the victim was tried as an adult under the current version of the act. There are existing measures in the Youth Criminal Justice Act that provide that for certain types of very serious crimes, youth could be tried as adults.

The Conservative government's obsession with wanting to impose adult sentences on youths is unhealthy since it goes against the consensus among Canadian legal experts who say that when criminal charges involve young offenders, it is crucial to take their specific conditions into account. We can refer to what the Canadian Bar Association said in its brief:

> Young people should not be locked up for long periods, except in the most serious cases. A young person will subsequently spend many years back in our communities, so it is in the best interests of both society and that young person to focus on how rehabilitation can best be achieved. The most effective way to protect society in the long term is to reform that youth before it is time for return to society.

Honourable senators, it is imperative to maintain the specificity of criminal law as it applies to youth by focusing on rehabilitation as the way to protect the public in the long term.

No one is in favour of criminals. No one is minimizing the importance of defending the victims. Claiming the contrary is, as Gilles Ouimet, outgoing president of the bar, says:

> The demagogical way of downplaying the arguments of the opponents to Bill C-10. . . .

What is more, Danièle Roy, head of communications at the Association québécoise des avocats et avocates de la défense, says:

> Defence lawyers are not there to have criminals released, but to ensure that the rights of everyone, both victims and defendants, are respected.

With respect to victims' rights, the legislator has a duty to not create an act that will jeopardize society more than the act it will replace. Alain Roy, a full professor in the faculty of law at Université de Montréal, said:

> By playing on the sympathy that is naturally evoked for crime victims, the Harper government is showing unparalleled Machiavellianism. Bill C-10 does not move anyone forward — not victims, not children and not Canada. This is a step backwards that will once again tarnish the reputation of a country once known for its leadership on human rights.

As the Canadian Bar Association said in its brief, legislation should focus on the notion of public interest instead of public opinion. The government must promote the long-term protection of the public, which is achieved through rehabilitation and reintegration instead of harsher penalties. This is in the interests of victims, which this 114-page bill completely ignores. This is in the interests of Canadian society as a whole.

Pierre Hamel, the senior legal advisor for the Association des centres jeunesse du Québec, believes that removing the notion of long-term protection of the public would be very detrimental to the Canadian public because section 3 of the act:

> . . . erases the notion of long-term protection of the public by introducing the simple concept of protection. One potential concern would be sentences that focus on the immediate protection of the public, without any chance of reintegration.

• (2100)

The lack of any reference to "long-term" in section 3 of the Youth Criminal Justice Act has the effect of precluding rehabilitation and social reintegration. The most effective way to protect the public is not to give youth long-term sentences, but instead to reform youth before they return to society.

Mr. Ouimet says:

> . . . Senator Boisvenu [and] the Conservatives claim that they are protecting the public, but in fact, their position is not based on any data, any serious analysis of the needs of the justice system or society, and for that reason we must oppose this bill.

I find that this law reeks of primal vengeance.

Taking a different approach to juvenile delinquency is espoused not only by the Supreme Court of Canada, but also by the medical profession.

As stated by psychiatrist Ruben C. Gur in a scientific article entitled *Brain Maturation and the Execution of Juveniles*:

> . . . brain maturation continues well beyond childhood and adolescence. . . .

Mr. Gur added that a number of recent scientific studies:

> . . . have revealed that one of the last areas of the brain to mature is the prefrontal cortex, an area which we have seen is implicated in judgment, decision making and controlling emotions . . .

Science has recognized many times that, before the age of 22, the brain has not established all the neurological connections found in an adult human. Judging an adolescent as an adult would not allow for consideration of the significant biological differences in the adolescent's brain, which affect judgment and decision making.

The Canadian Paediatric Society has also taken a very clear position on the provisions concerning young offenders because they place too much emphasis on incarceration to the detriment of rehabilitation and reintegration. The reason for the objection is very simple. Bill C-10 will have very perverse effects because adolescents will be judged as though they were adults. The Canadian Paediatric Society has joined the Canadian Bar Association and the Canadian Council of Child and Youth Advocates in criticizing the fact that the introduction in Bill C-10 of stiffer sentences starting at 14 years of age for children convicted of serious crimes will have a very negative impact on our society.

Furthermore, given that Bill C-10 threatens the special treatment that children and adolescents need, I must remind honourable senators that, by passing this bill, the Canadian government would be in violation of the Convention on the Rights of the Child, which it has signed. The first paragraph of article 40 of that convention states that every child accused of infringing the penal law of states parties must be treated differently than an adult would be treated. It is written as follows:

> States parties recognize the right of every child alleged . . .

[Senator Hervieux-Payette]

[*English*]

The Hon. the Speaker *pro tempore*: Honourable senators, five more minutes?

Hon. Senators: Agreed.

[*Translation*]

Senator Hervieux-Payette: Thus, it states:

> States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Bill C-10 does not comply with this international obligation, which is one reason why it must be amended, as the Government of Quebec has proposed.

The Government of Quebec is proposing three amendments to the part of the bill dealing with the Youth Criminal Justice Act. First, it is proposing adding the notion of "long-term" protection — the expression "long-term" is crucial here — of the public to section 3 of the Youth Criminal Justice Act.

Second, the Government of Quebec is proposing changing paragraph 3(1)(*a*) in the French version of the act by replacing the word "encourager" with "favoriser." This would ensure that the notion of rehabilitation and reintegration is not undermined.

Finally, the Government of Quebec would like to be able to opt out of new provisions set out in Bill C-10 that would lift the ban on publishing any information that would reveal the identity of a young offender. The fact that no information can be published about the identity of young offenders helps them to reintegrate into society after completing the rehabilitation process. I must add, honourable senators, that this measure is absolutely essential in helping young offenders integrate into society as adults, once they have served their sentence and completed a rehabilitation program.

As a result, I ask you to support the amendments proposed by Quebec regarding young offenders. I think that, as parents, we would agree with those who have children with problems that we must treat them as the international convention prescribes — in a humane and Canadian manner.

[*English*]

The Hon. the Speaker *pro tempore*: Further debate?

Hon. Pierre-Hugues Boisvenu: I have a question.

The Hon. the Speaker *pro tempore*: Would you accept a question, Honourable Senator Hervieux-Payette?

Senator Hervieux-Payette: Yes.

[*Translation*]

Senator Boisvenu: Obviously, the honourable senator understands that I disagree with her statement. She said that, from now on, our government will favour repression over prevention and rehabilitation. However, the honourable senator knows full well that Bill C-10 will affect only three per cent of young offenders in Quebec and four to five per cent of young offenders in English Canada.

I am convinced that the honourable senator wrote her statement herself and that she conducted her own research from her office.

I would like to ask two questions. First, how many young people in Quebec were tried as adults last year? Second, how many young people will be tried as adults if Bill C-10 is passed? Saying that this bill will be repressive for young people means that you have statistics on what was happening before and what will happen later. If not, the statement is unwarranted.

I would like the honourable senator to tell me how many young people were tried as adults last year in Quebec and how many will be if Bill C-10 is passed.

Senator Hervieux-Payette: I understand that the honourable senator would like to have some statistics. As the Leader of the Government is wont to reply, I will be happy to send him the data later because I do not have it in front of me.

I would nevertheless like to remind the honourable senator that as the parliamentary secretary to the Solicitor General of Canada, I was responsible for the first bill to reform the Young Offenders Act in 1988. It was the first piece of legislation on young offenders. That legislation followed legislation I had worked on in Quebec, the Youth Protection Act. We made sure that our children in Canada, and those who were in trouble with the law, had continued treatment.

In some cases — and you will read this in some of my other speeches — you will know that children who were mistreated when they were young have two ways of responding. Some self-mutilate, commit suicide, succeed at nothing in life; others become violent toward society. I do not have any statistics on that, but Statistics Canada does.

When we look at a bill, it is not a matter of numbers; it is a matter of principle. I cannot predict the future. However, Canada must respect the international Convention on the Rights of the Child. We must not treat children like adults. Age 14 has never been the legal age. I would be very happy to see parents one day say that in Canada, we cannot have two systems of justice: one for youth aged 14 in the rest of Canada and one for youth aged 16 in Quebec. There is just one law in Canada.

As far as I am concerned, rehabilitation is important.

[*English*]

The Hon. the Speaker *pro tempore*: I regret to inform the honourable senator that her time has expired.

• (2110)

Hon. Jane Cordy: Honourable senators, I rise to speak to Bill C-10. Bill C-10, as you know, is a very lengthy bill, so I will speak this evening specifically to the lack of support and treatment for those mentally ill Canadians who find themselves in our prisons and the increasing number of these Canadians who will find themselves in prison as a result of Bill C-10.

Sweeping changes are on the way for our correctional services. With restriction on the availability of conditional sentences through mandatory minimum sentencing and the elimination of two-for-one credit for time served in pretrial custody, the Canadian correctional services are bracing for a dramatic influx of inmates. In addition to the influx, these inmates will now be serving for longer periods of time, further adding to the strain on capacity. It is estimated that the federal prison population is expected to grow by 4,000 inmates over the next five years. This is an increase of over 25 per cent.

Currently, Canada's prison facilities are bursting at the seams and are not capable of housing an increase of 4,000 inmates. To accommodate this influx of inmates, hundreds of millions of dollars will have to be spent to expand our prisons. As Senator Tkachuk said earlier, there is no question that many our prisons are in need of infrastructure improvements; unfortunately, the government's motivation for the infusion of prison spending is not to renovate but, rather, to lock up as many Canadian offenders as possible, all in the name of crime prevention.

An issue that Canada's correctional services will have to face is that new cell construction will not be able to keep up with the wave of new inmates. The concern is that this will lead to prison overcrowding. Prison managers are already forced to implement double-bunking to squeeze in the large number of inmates. Some prisons are already reporting 200 per cent occupancy. As the increase in prisons climbs, more managers will be forced to double up inmates in cells designed for one. We will also see an increase in "responsibility units," which is an open-concept accommodation similar to an army barracks type of setting. In some women's prisons, the inmates are housed in gymnasiums in order to handle the overcrowding. This double-bunking increases threats to prison employees and guards, as do the responsibility units, because there are few locking barriers to restrict inmate movement. We are putting the safety of prison employees at risk with this bill.

However, as we all know, prisons are more than just bricks and mortar. Along with more prison cells to accommodate the increase in prison population, the Canadian correctional services will require a significant increase in personnel to manage the prisons. It is estimated that over 3,000 new employees will be needed to manage the 4,000 new inmates created with the Conservative's so-called "tough on crime" legislation.

My understanding is that the staffing strategies by Correctional Services Canada for the required 3,000-plus new hires will be 1,373 correctional officers, 423 new parole and program officers, 445 administrative services personnel, 399 clerical workers, and only 35 new health professionals.

Correctional Services Canada has stated that inmates' mental health is a top-five priority and advances have been made educating staff on mental health awareness. However, with only a commitment for 35 new health care professionals — 10 psychologists and 25 nurses — I am unsure of how much of a priority this truly is. Thirty-five new health care professionals spread across the country will do little to advance the treatment of the increasing number of inmates with poor mental health.

Indeed, recent studies have shown a sharp increase in the number of inmates suffering from poor mental health. Between 2004 and 2009, the number of male inmates in Ontario with a mental health disorder increased by 5.7 per cent. The percentage of those with a mental illness is starkly higher in the female inmate population, with close to 31 per cent of female inmates having mental health problems. Unfortunately, these numbers continue to rise, and, honourable senators, these numbers are just the tip of the iceberg. These are only the numbers diagnosed.

There is a clear need for treatment for these inmates who suffer from poor mental health on both a compassionate basis and a crime prevention basis. In most cases, inmates who enter the correctional facilities with a mental illness and who remain there without treatment come out in worse condition. The chances of these people reoffending, or even committing a much worse crime once released, are significantly higher unless they receive the help they need. Now, with overcrowding becoming ever more prevalent, the prisons are creating an environment that is only compounding inmates' mental illnesses, whereas if these offenders receive proper treatment for their diagnosed psychiatric conditions while in custody, it is shown that the percentage of those reoffending goes significantly down.

As it stands right now, our prison system is feeling the strains of increased inmate numbers, and mental health treatment among those inmates seems to be increasingly relegated to the back burner. Canadian prisons are increasingly unable to handle and treat the large number of inmates with psychiatric issues. They just do not have the staff, the resources or the facilities to do so.

A common tactic in our prisons when dealing with an inmate with a psychiatric condition who acts out is either segregation, which is solitary confinement, or restraint by physical or pharmaceutical means. None of these tactics is treatment, and, specifically in the case of solitary confinement, they can lead to additional mental health issues.

The recent inquiry into the suicide of female inmate Ashley Smith only highlights how our system is currently failing to recognize and provide treatment for those inmates with poor mental health.

Something as simple as family visits have been shown to help ease the conditions of inmates with mental illness and have a positive impact on their rehabilitation. However, Bill C-10 proposes to limit even the access to family visits for those in segregation. What are we doing as a government?

I applaud Senator Runciman's achievement of pioneering the St. Lawrence Valley Correctional and Treatment Centre in Brockville while Ontario's Minister of Correctional Services. The institution is run by the Royal Ottawa Health Care Group and provides treatment for male offenders in a hospital environment while providing prison-level security. The program works. Over the first five years of the treatment centre's operation, inmate recidivism rates dropped by 40 per cent for those who received treatment.

I understand Senator Runciman is spearheading efforts to establish a similar facility for female offenders, and I wholeheartedly support his efforts. He should be commended for his understanding and his efforts to help those with mental illness who find themselves in the prison system.

No one can deny these types of programs and facilities are effective and are desperately needed. Therefore, why is none of the $2 billion earmarked for Canada's prisons dedicated to supporting facilities for treating mentally ill offenders? This approach is shown to work. Our streets are safer when those offenders requiring psychiatric treatment receive it. Is that not what we want, safer streets? It is a win-win situation — safer streets and a better life for those who have poor mental health.

I believe that the Canadian government must make treatment of Canada's mentally ill inmates a priority. Locking up those with poor mental health and not providing treatment is not making our streets any safer, and in many cases it actually puts our correctional services front-line workers in more dangerous situations.

Leaving many mentally ill inmates languishing in overcrowded prisons untreated and among the general prison population adversely affects their condition. As noted, in many cases the inmate's illness is compounded with additional psychiatric conditions while in prison.

• (2120)

More has to be done to support health care staff within Canadian correctional services. Staff recruitment and retention are a problem. The system is understaffed and has a hard time enticing new mental health professionals, as many are apprehensive about working in the prison environment. This will become worse with the implementation of Bill C-10, when resources will be stretched as prison overcrowding grows.

The myopic view of Bill C-10, locking up Canadian offenders and throwing away the key, is not good crime prevention. We must include rehabilitation, and in the case of diagnosed psychiatric conditions, treatment is needed. As much as the Harper government would like those with mental illnesses who have committed a crime to never get out of prison, that is not the case. Having them released after they have rightfully served their sentence in worse condition than when they went in does not make our streets safer.

Crime prevention requires a multi-faceted approach. This is a fact that I believe Bill C-10 ignores in favour of ideology. Failing to address the needs of the staggering number of Canada's inmates suffering from mental health and addiction issues leaves everyone vulnerable.

I have made much mention of the effects that Bill C-10 will have on those prison inmates with mental illnesses, but what I find most distressing is the number of Canada's young people who suffer from mental illness who will be swept up in our youth legal system and, in increasing numbers, tried as adults.

Studies show that up to 70 per cent of young offenders have some form of mental illness. There are numerous reasons for this fact. Some mental illnesses are manifested in aggressive behaviour, typically toward an authoritative figure. Doctors tell us that this behaviour is more prominent in youth with mental illness, as they are still learning to cope and deal with their issues. It is not uncommon that the first point of contact for someone who is acting out is not trained to deal with youth with these issues, and the police are often called upon to handle the situation.

It is unfortunate that, while some police departments are training their officers to deal with those with poor mental health, many officers are not specially trained, so a situation can quickly escalate, resulting in youth in trouble with the law.

It is shown that when a police force does employ officers with the proper training to deal with people with mental illnesses, the outcomes of these interactions are drastically improved. Unfortunately, not all police forces across the country have the resources to train their police force to recognize and deal with these types of situations.

The sad truth for many young people in conflict with the law who have poor mental health is that their condition is exacerbated by a poor, indifferent or abusive home life. By the time they find themselves in front of a judge, it is not uncommon for the offenders to have been failed by their own family, then by law enforcement. Now, with minimum sentencing clauses contained in Bill C-10, judges will lose their powers of discretion to send offenders for treatment instead of incarceration.

An amendment put forward in the other place by Irwin Cotler, a Liberal MP, was voted down by the Conservative majority. That is unfortunate. The judges will now have no discretion when someone with poor mental health comes before them. For some youth in this situation their mental well-being can be at a crossroads. The difference of receiving treatment or not, for a young offender with a mental illness, could set their path for life. Studies show that an offender's mental health will deteriorate the longer they are untreated.

This is especially true in the cases of young offenders who are tried and sentenced as adults and find themselves in adult facilities. These facilities are not structured for young people, and in many cases staff are under too much strain to cope and meet the needs of adolescent offenders with or without a mental condition. In many cases, abuses may occur within the system by other inmates. When these concerns are raised, I hear too often, "Who cares about prisoners' well-being? They deserve it." That is unfortunate.

The gut reaction of vengeance is a powerful impulse when dealing with crime in our society. The government says this legislation is for victims' rights, but punishment without treatment of our mentally ill offenders does not serve society or keep our streets any safer in the long run.

May I have five more minutes, please?

The Hon. the Speaker *pro tempore*: Honourable senators, is five more minutes granted?

Senator Day: Absolutely.

Senator Mockler: In the spirit of cooperation.

Some Hon. Senators: Yes.

Senator Cordy: I truly hope that there is room for compassion and discretion in a just and fair Canadian justice system.

I am not for a second advocating that all offenders, mentally ill or not, who are convicted of violent crimes do not deserve the extent of sentencing laws, but I believe taking away a judge's discretion when dealing with young offenders for treatment over incarceration will have the reverse desired effect.

I know many will stand in this chamber and accuse opponents of Bill C-10 of being bleeding-heart liberals in contempt of Canadian victims of crime. I find this offensive. I believe, and the evidence shows, that locking up offenders without treatment of underlying mental illnesses does not just fail the offender but it also fails society in the longer term.

Some Hon. Senators: Hear, hear.

Senator Cordy: I have met with many young people and many adults who suffer from different mental illnesses from all across this country. I was proud to be a member of the Standing Senate Committee on Social Affairs, Science and Technology when we studied the issues of mental health, mental illness and addictions. Our report, *Out of the Shadows at Last*, was an excellent study and led to the creation of the Mental Health Commission of Canada. Many senators across the aisle were also part of this study and can attest to the hardships suffered by those falling through the cracks of not just our justice system but our health care system as well.

At a time when public opinion shows that 93 per cent of Canadians feel safe from crime, this bill commits billions of taxpayers' dollars implementing failed American crime prevention policies that ignore evidence in favour of ideology. This is a huge step backwards. The sad truth is this bill ignores the needs of mentally ill persons who are in conflict with the law and who get caught up in the legal system.

This bill, Bill C-10, will ultimately lead to more violent inmates and less safe streets.

As Roy Muise, a certified peer specialist for those with poor mental health in the Halifax area, told the Standing Senate Committee on Social Affairs, Science and Technology on May 9, 2005 in Halifax:

> To the people of Canada, I say welcome us into society as full partners. We are not to be feared or pitied. Remember, we are your mothers and fathers, sisters and brothers, your friends, co-workers and children. Join hands with us and travel together with us on our road to recovery.

Honourable senators, one in five Canadians will suffer from poor mental health in their lives. Some, unfortunately, will come in conflict with the law. Let us not, as a society, allow those with mental illness to languish in jail with no treatment. Let us instead, as a society, ensure that treatment is given to those who need it, whether that is administered in a secure hospital environment or by allowing judges to use their discretion to have a mentally ill offender sent for treatment instead of forcing mandatory prison sentences. That, honourable senators, is what will make our community safer.

Let us travel together, as Mr. Roy Muise stated, on the road to recovery for those with mental illness who have come in conflict with the law.

Honourable senators, let us not talk about being tough on crime or soft on crime. Let us talk about being smart on crime or, as the hundreds of emails sent to me state, let us talk about a bill that will make Canada safer, not meaner.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker *pro tempore*: Questions or further debate? Honourable Senator Di Nino.

Hon. Consiglio Di Nino: I have a question, if I may.

The Hon. the Speaker *pro tempore*: Senator Cordy, will you accept a question?

Senator Cordy: If there is time, I certainly will accept a question.

Senator Di Nino: Thank you. The honourable senator referred to truly one of the best reports that this institution has prepared over the years, *Out of the Shadows at Last*, on mental health issues in this country.

To be fair, the honourable senator should also include the fact that it was this government and Mr. Harper who accepted the recommendation of that report and created a mental health commission and asked the chair of that report, the now-retired Liberal senator, Senator Kirby, to be chair of that particular commission.

Would she not agree that is a very good step forward to deal with the issues the honourable senator was talking about?

• (2130)

Senator Cordy: That is an excellent comment. I thank the honourable senator very much. He is absolutely right; the Chair of the Mental Health Commission was appointed by the Conservative government. Perhaps we could invite Senator Kirby to be a witness when this bill is before the Senate.

The Hon. the Speaker *pro tempore*: Further debate?

(On motion of Senator Tardif, debate adjourned.)

[Senator Cordy]

[*Translation*]

BUSINESS OF THE SENATE

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, with the consent of the Senate, I would like to proceed immediately with the second reading of Bill C-20.

The Hon. the Speaker *pro tempore*: Is it agreed, honourable senators?

Hon. Senators: Agreed.

CONSTITUTION ACT, 1867
ELECTORAL BOUNDARIES READJUSTMENT ACT
CANADA ELECTIONS ACT

BILL TO AMEND—SECOND READING

Hon. Claude Carignan moved second reading of Bill C-20, An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act.

He said: Honourable senators, I am pleased to express my support for Bill C-20, the Fair Representation Act, which allows the government to keep its promise to ensure fairer representation in the House of Commons. Our government is therefore diligently fulfilling the commitment made during the last election. This commitment was as follows:

> The Fathers of Confederation agreed that the allocation of seats in the House of Commons should reflect each province's share of the population. Representation by population has remained a fundamental principle of our democracy ever since.
>
> To ensure this principle is maintained and to take into account population changes across the country, from time to time the formula for allocating seats has been updated. Updates to the formula have been designed to ensure fairness for both faster- and slower growing provinces.
>
> Because of significant population changes since the last update, the provinces of British Columbia, Alberta, and Ontario are now significantly underrepresented.
>
> We will reintroduce legislation to restore fair representation in the House of Commons.
>
> At the same time, we will protect the seat count of slower-growing provinces. We will ensure that Quebec's seat count will not drop below its current 75 seats, and that the population of Quebec remains proportionately represented.

That is the government's commitment. This bill is important since it has to do with a right that is fundamental to a free and democratic society — the right to vote — which in Canada is constitutionally guaranteed in section 3 of the Charter.

[*English*]

Bill C-20 increases the number of seats in the House of Commons for the three faster growing provinces of Ontario, British Columbia and Alberta. As a result of their population growth and of the effects of the current seat allocation formula, these provinces have become increasingly under-represented over the past 25 years.

To correct this situation, Ontario would, under the Fair Representation Bill, get 15 additional seats, while British Columbia and Alberta would get an additional 6 seats each.

[*Translation*]

Some people claim that we should not increase the number of members in the House of Commons in order to save money during times of fiscal restraint. I do not agree. Others before me also expressed their disagreement with saving money at the expense of fair and effective representation. During the debates surrounding the constitutional amendment bill regarding the electoral boundaries readjustment in 1985 and 1986, a number of Liberal parliamentarians felt that democracy should not suffer in an attempt to save money. During debates in the Senate concerning these amendments, Liberal Senator Richard J. Stanbury said:

> Saving money does not mean much compared to providing proper representation for voters in Parliament.

[*English*]

The Fair Representation Bill also protects the seat counts of slower growing provinces by maintaining the current constitutional guarantees, the "Senate clause," which ensures that a province gets at least as many seats in the House of Commons as it gets in this chamber, and the "grandfather clause," which guarantees to provinces at least the number of seats they had in 1986.

In addition to maintaining the seat levels of slower growing provinces, Bill C-20 affords a third constitutional protection to these provinces. It guarantees that, once a province's share of seats in the House of Commons is equal to or greater than its share of the population or, in other words, once a province is at representation by population or is over-represented, that province should not become under-represented as a result of a readjustment.

[*Translation*]

The Province of Quebec, which will be under-represented if the seats are added as planned, will be the first to benefit from this guarantee we call the representation rule. As a result of the next representation readjustment, Quebec will be given three additional seats, which will allow the province to maintain representation that is proportional to its population compared to other provinces.

This new provision, although it is not directly related to section 52 of the Charter, is still in keeping with the willingness of the Fathers of Confederation to protect the weight of Quebec in the Canadian federation. Section 52 of the Constitution Act, 1867, clearly establishes Parliament's ability to increase the number of members in the House of Commons but imposes an obligation to protect the proportions established at that time for the representation of the provinces. One of the purposes of this provision was to protect the weight of Quebec, which was in a minority in the federation. The evidence is the fact that the formula used at the time to determine the number of extra ridings to add after each census was called the Quebec clause. Thus, the unit of measurement, also known as the electoral quotient, used to determine the number of ridings in the country was calculated based on the average number of citizens in the ridings of Quebec.

In 1903, during the debates surrounding the electoral reform proposed by Sir Wilfrid Laurier's Liberal government, Mr. Laurier introduced the obligation to use Quebec's weight as a basis for calculation:

> The Province of Quebec — need I say — serves as the basis for calculating representation, and the number of representatives of each province depends on how their populations compare to the population of Quebec.
>
> All of the provinces located on this side of Lake Superior, except the Province of Quebec, whose representation cannot change, will lose some of their representatives.

• (2140)

This situation will repeat itself with the new rule, which will guarantee a certain threshold of proportionality to each province.

[*English*]

In enacting a new constitutional formula for the allocation of seats in the House of Commons, the Fair Representation Act brings every province closer to the principle of representation by population.

[*Translation*]

Bill C-20 aims to correct some of the large population discrepancies that exist in the current ridings. However, it would be idealistic and unrealistic to think that redrawing the electoral map will ensure perfectly equal representation in the number of residents of each riding. As former Senator Beaudoin so aptly put it:

> Canada is sparsely populated and has a huge territory. These two factors make it very difficult to ensure equality among the ridings.

In that regard, in a 1991 Supreme Court of Canada decision, *Reference re Prov. Electoral Boundaries (Sask.)*, a decision from the highest court in the land, dealing with the obligations underlying the guarantee to the right to vote, and particularly when the electoral map is being redrawn:

> . . . rejected a "one person - one vote" approach in favour of an approach which permitted consideration of countervailing factors.

Senator Beaudoin explained to us the nature of this ruling in the following terms:

> In this reference, the majority of the Supreme Court held that section 3 of the Charter does not lay down the principle of "one person, one vote". Section 3 rather guarantees the right to "effective representation", a broader concept than that of the equality of votes, according to Madam Justice McLachlin:
>
> . . . the purpose of the right to vote enshrined in s. 3 of the Charter is not equality of voting power per se but the right to "effective representation". Ours is a representative democracy. Each citizen is entitled to be represented in government.

The principle of effective representation was a consideration for the Fathers of Confederation. During the debates on the distribution of new representatives in the House of Commons in 1872, Sir John A. Macdonald recognized this fact when he said:

> . . .it will be found that,. . .while the principle of population was considered to a very great extent, other considerations were also held to have weight; so that different interests, classes and localities should be fairly represented, that the principle of numbers should not be the only one.

I would like to point out that when Sir John A. Macdonald spoke of interests he was referring to the protection of minorities, among other things. The history of proportional representation in Canada demonstrates that the distribution of seats was never a purely mathematical calculation, as the Supreme Court of British Columbia clearly stated in the ruling handed down on December 30, 1987 in *Campbell v. Canada*.

The Court had this to say:

[*English*]

> First, it cannot be said that perfect mathematical representation has ever been prescribed by the Constitution of Canada. Derogation from this ideal first arose in the 1/20 or 5 per cent rule found in the B.N.A. Act, 1867 and later in the provision of representation for the territories, the Senatorial Rule, the 15 per cent rule and the amalgam rule. The Constitution at the moment after the 1982 renewel prescribed at least the Senatorial Rule, the amalgam rule and territorial representation, all of which permitted imperfect representation by population. The constitutional history of Canada has clearly been to cushion provinces against the loss of representation in the House of Commons by reason of declining relative populations. In my view the principle of representation "prescribed by the Constitution does not require perfect mathematical representation but, representation based primarily, but not entirely, upon population"

[*Translation*]

This position was confirmed by the British Columbia Court of Appeal in the same matter in these words:

[*English*]

> Thus, the propositionate representation demanded by the Constitution in 1867 was not pure representation by population.

[*Translation*]

In the 1991 *Carter* ruling, the Supreme Court of Canada stated:

> It emerges therefore that deviations from absolute voter parity may be justified on the grounds of practical impossibility or the provision of more effective representation. The first and most important rule is that the right must be interpreted in accordance with its purpose. As will be seen, there is little in the history or philosophy of Canadian democracy that suggests that the framers of the Charter in enacting s. 3 had as their ultimate goal the attainment of voter parity.

However, the new formula to determine the electoral quotient nevertheless seeks to approach the maximum real growth rate of each province, thus making the new electoral map that will be established for the next election more equitable.

[*English*]

During the next minutes, my remarks will briefly review the history of the House of Commons' seat allocation formula as well as the constitutional procedure for amending it. I will also provide honourable senators with a brief overview of other changes brought by Bill C-20.

[*Translation*]

The size of the House of Commons of Canada has slowly grown from 181 members in 1867, when the country had just four provinces, to the number of MPs we have today. The British North America Act, now known as the Constitution Act, 1867, has always, since its passage by the Parliament of Westminster, provided a formula for reviewing the number of seats in the House and distributing those seats among the provinces.

[*English*]

That formula has been amended on five occasions since 1867, and its various iterations have often had common characteristics. The main factor for the allocation of seats to provinces has always been the principle of representation by population. Each formula found a way to compare the relative population of each province and to assign seats on that basis.

[*Translation*]

Strict representation by population has never been part of the formula since it would be impossible to achieve perfect representation without considerably increasing the size of the

House of Commons. These formulas have always been designed in such a way to find a compromise between the need for the provinces with higher population growth rates to see their representation increase and the need for smaller provinces to maintain an appropriate level of representation.

Various approaches have been taken over the years to achieve this objective. For example, at the time of Confederation, a provision stipulated that no province could lose seats following a representation review unless its share of the population had decreased by more than 5 per cent since the last decennial census.

• (2150)

That provision was repealed in 1946.

[*English*]

In 1951, a new guarantee that no province could lose more than 15 per cent of its seats in the House of Commons was enacted. That protection also stated that no province could have fewer seats than a province with a smaller population. These guarantees were enhanced in 1974, where the Constitution was amended to stipulate that no province could lose seats as a result of a readjustment. This clause was repealed in 1985.

However, some other constitutional guarantees adopted during the 20th century are still in force today.

[*Translation*]

The senatorial clause adopted in 1915 is one of those. As I mentioned earlier, this clause guarantees that all provinces have at least as many seats in the House as in the Senate. New Brunswick, Prince Edward Island and, to a lesser extent, Nova Scotia and Newfoundland and Labrador are the provinces that benefit from this provision.

Another guarantee still in force today is the grandfather clause, which ensures that provinces maintain the number of seats they had before this clause took effect in 1986. Quebec, Nova Scotia, Manitoba, Saskatchewan and Newfoundland and Labrador are the provinces that benefit from this.

The many formulas adopted were all characterized by the need to manage the growth of the House of Commons. As I mentioned earlier, from 1867 to 1946 Quebec had a fixed number of 65 seats, and the other provinces were allocated seats based on the average population of a riding in Quebec, in accordance with the constitutional guarantees I mentioned earlier. However, it was discovered that basing the seat allocation formula on demographic growth trends in a single province could create rapid fluctuations in the size of the House and the representation of the other provinces.

In 1946 the formula was modified to limit the number of seats in the House of Commons. But once again, since demographic growth trends vary from province to province, the provinces with slower growth were losing seats.

A new readjustment formula was adopted in 1974, which is known as the amalgam formula. After testing it out in 1976, the government realized that this formula would considerably increase the size of the House of Commons in the medium and long term. Thus, the idea of limiting the size of the House reappeared in the 1980s.

That was when Parliament adopted the current formula, which sets a limit of 279 for seats allocated to the provinces according to the principle of representation by population. Additional seats are then allocated to the provinces with slower growth to respect the constitutional guarantees I mentioned earlier.

This formula has proven to be useful in limiting the size of the House of Commons, but it has also led to the under-representation of provinces with rapidly growing populations.

That is why Bill C-20 would maintain the number of members sitting in the House within reasonable limits, while respecting constitutional guarantees in relation to the number of seats and bringing those provinces experiencing rapid population growth closer to fair representation by population, today and in the future.

To achieve those objectives, the fair representation bill uses an electoral quotient — which is determined as follows: the number of people in an average riding in 2001, increased by the simple average of provincial population growth rates 10 years later.

In other words, the percentage of growth must be established for each province based on population forecasts from the Chief Statistician of Canada, following the 2011 census, compared to the 2001 census. Then, the average of the 10 rates of population growth must be established and that number is multiplied by the number of people in an average riding in 2001.

Based on this formula, the electoral quotient for the next readjustment will be 111,166 people. This formula protects all the provinces in terms of their relative weight in the House of Commons.

The size of the House of Commons will increase to 338 seats after the next readjustment, but it should increase more modestly in the future. Ontario, British Columbia and Alberta will also benefit from more accurate representation of their population.

Any changes to the formula for allocating House of Commons seats constitute, by definition, a constitutional amendment.

The Constitution Act, 1982 stipulates that Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and the House of Commons.

The current formula for allocating House of Commons seats that respects the senatorial clause was passed by Parliament in 1986 under this exclusive jurisdiction. Similarly, the fair representation bill must be adopted based on this amending formula.

Bill C-20 amends the formula found in the Constitution Act, 1867, for allocating seats and also makes other amendments to the representation readjustment process.

First, it requires that the allocation of seats to the provinces and the redistribution of the ridings in each province be based on the best demographic data available.

That is why, from now on, the seats allocated to the provinces will be based on the population estimates published by Statistics Canada.

Based on the data from the most recent census, the population estimates take into account the census net undercoverage or, in other words, the fact that not everyone will be included in the census data.

Statistics Canada already prepares population estimates, which are used for programs such as the equalization program.

Wayne Smith, Chief Statistician of Canada, stated the following before the Standing Committee on Procedure:

> . . .it is Statistics Canada's view that the currently available estimates of population at July 1 represent the best available evaluation of the population of the provinces and territories that is available at this time or that will be available on February 8. It is therefore appropriate, in our view, that they should be used for the purposes of Bill C-20.

The simplification of the readjustment process set out in the Electoral Boundaries Readjustment Act is the second amendment made by Bill C-20.

Following the last readjustment of electoral boundaries, the Standing Committee on Procedure and House Affairs of the House of Commons and the Chief Electoral Officer produced reports in which they recommended that certain time frames set out in the act be reduced.

• (2200)

Bill C-20 follows through on those recommendations and amends the Electoral Boundaries Readjustment Act, particularly by moving up the date for establishing the independent commissions; reducing the minimum number of days of public notice that the commissions must give before holding consultations from 60 to 30; allowing interested parties to waive their obligation to provide the commissions with a notice of intention to appear; reducing the period of time granted to the commissions to submit the report to the House committee for review from 12 to 10 months and reducing the extension that the Chief Electoral Officer can grant from six to two months; and reducing the time needed for the new electoral map to come into effect by five months.

These reduced time frames will make it possible to more quickly determine and apply new riding boundaries.

The proposed changes to the constitutional formula for allocating seats in the House of Commons and to the Electoral Boundaries Readjustment Act, will apply as soon as Bill C-20 receives royal assent.

Even if Bill C-20 is passed after February 8, it includes a series of provisions that will ensure its application. However, as the Chief Electoral Officer said, and he insisted on the importance of passing the bill before that date when he appeared before the House of Commons committee, the best date in our mind would be before the commissions are created in February. Otherwise, the commissions will have to start their work, the law will come into force later, and they will have to start their work over again. This could run additional costs, but could also cause quite a bit of confusion depending on when the bill comes into force.

Accordingly, I urge honourable senators to proceed quickly with consideration of the Fair Representation Act.

I will close by saying that, in my opinion, the proposed formula in Bill C-20 is the best principled formula for ensuring fairer representation for all the provinces.

I am asking all honourable senators in this chamber to support this bill to restore fair representation in the House of Commons.

Hon. Dennis Dawson: The spirit of Christmas is no longer within me, honourable senators. I supported Senator Meighen's Bill S-1002 in the spirit of Christmas and I did the same for Bill S-4. Unfortunately, I have bad news for you; the spirit of Christmas is no longer there and we will oppose your bill. That is the bad news. The good news is that we will again collaborate with you since you have once again imposed a deadline, this time for February.

[*English*]

Do not worry; my speech will be much shorter, in the Christmas spirit.

Some Hon. Senators: Hear, hear!

Senator Dawson: And it will be cooperative. I, Senator Verner and many other senators on both sides sat as members in the other chamber. Senator Comeau was there, but before I was.

When I was in the other chamber I would have been offended if this chamber had made decisions on electoral boundaries or other electoral issues concerning that chamber. I can assure you that the objective here is not to obstruct but to cooperate.

On the other hand, we do have a responsibility to ensure that the legislation is as good as possible, which is not always the case, as honourable senators know. That is a bit surprising because over the last five years fewer and fewer amendments have been accepted in the other chamber by members of the House of Commons. Practically no amendments are accepted either in committee or in the chamber. The number of amendments accepted has been decreasing year and year.

Either you have found such good writers of legislation that they do not make mistakes, or someone is telling you to hold your nose, close your eyes and pass bills as quickly as possible.

Five hundred amendments were presented by this chamber in 2005 and 450 were accepted in the other chamber. A year later, on the accountability bill, 175 amendments were made here and 150 were accepted by the other place. Have your drafters of legislation become so good that they have stopped making mistakes? I doubt it.

[*Translation*]

To come back to the bill, as you know, I have introduced bills on political party financing.

[*English*]

We have opinions to express, but I do sincerely believe that there is a limit to our responsibility in this legislation. I will cooperate over the next few days to get this legislation through, but we will certainly move amendments that we think are required and justified.

[*Translation*]

We must analyze the legislation and hear from witnesses, constitutional experts and other experts on the matter, to properly understand the issues related to this bill.

I know that some honourable senators on both sides of this chamber have concerns about how involved we should be, but there are a number of options between obstructing and blindly supporting. I can assure the honourable senators that these will no not take the form of obstruction, but neither will they be blind support.

Despite this, I think it is our duty to express our concerns.

[*English*]

When I was first elected to the House of Commons in 1977, there were 282 members of the House of Commons, and we went from 282 to 285. That was a big change. The current proposal is to have 338 members of Parliament, 10 per cent more than we currently have and a full 56 per cent more than we had 35 years ago when I was in the other place. *The Economist* magazine calls the government's approach "super-sizing the House of Commons."

Honourable senators, I do not support this bill for the following reasons: It costs too much; it waters down the influence of MPs; and it creates a formula for continual growth in the size of the House of Commons every decade going forward. There is a better way to make Parliament fair for all, including Quebec, which I will address.

Our democratic peers around the world are not increasing the size of their legislative assemblies. The House of Representatives in the United States is capped at 435 for 10 times as many people. Even though their population will grow, they have capped the number of representatives, a responsible move. The Parliament of the U.K., our mother Parliament, has passed a law to cut the number of seats from 650 to 600.

Australia, France, Germany — none of these countries are adding seats to their federal legislatures.

Honourable senators, we must ask: Why is this government alone in allowing the size of its parliament to grow unchecked?

Senator Mitchell: Because they like big government.

[*Translation*]

It is important for me to talk to this chamber about the special situation in Quebec, the province that I represent.

Since our country was created, Quebec's role and Quebec's weight in the decision regarding the number of parliamentarians have always been essential. This province's representation in the other chamber has remained relatively unchanged, which was a special consideration that we continue to recognize today in the proposals we will make in committee.

Our proposal in the other chamber aims to maintain Quebec's representation in the House of Commons at just over 23 per cent. That is exactly the current situation and the situation that existed a few years ago. That is a proportionate representation of the same percentage of Quebec's population compared to the rest of the Canadian population. In fact, our proposal is more generous to Quebec than the Conservatives' proposal.

The Conservatives claim that we will reduce Quebec's representation and, as a result, Quebec's influence in the House of Commons, but they are being deceptive. If we adopt the Conservative model, Quebec will get more seats, yes, but in a larger House of Commons. At the end of the day, this fixes nothing and Quebec will not be better off.

Yes, it is true that Quebec, compared to provinces with growing populations, may have benefitted. We may not have had the same growth, but we have always had a historical role in the number of seats in the other chamber.

• (2210)

The other chamber has always recognized the political and economic weight of Quebec and with our formula this will be maintained.

[*English*]

Let us talk about cost. The Canadian Taxpayers Federation — not well known as being our friends — usually finds itself in the Conservative camp, but not this time. They estimate that 30 more MPs will cost $18 million annually. When factoring in $11.5 million for each election, that adds up to an additional $84 million every four years. This is not chump change.

No less an authority than Prime Minister Stephen Harper agrees with me. This is what he said in 1994: "A smaller House offers considerable cost savings."

Some Hon. Senators: Hear, hear!

Senator Mercer: Way to go, Steve!

Senator Dawson: He was right at that time and he is still right today. He said, "Canadians are already among the most overrepresented people in the world."

Senator Mitchell: Did he say that?

Senator Dawson: I am caught agreeing with that. I am really uncomfortable here.

Do you ever wonder what happened to Stephen Harper? I guess he lost his principles on the way to the Prime Minister's Office, or was it 24 Sussex? For all of Mr. Harper's talk about shrinking government, his record shows the opposite. The Conservatives increased government spending by an astounding 21 per cent in 2006.

Senator Mitchell: How much?

Senator Dawson: Twenty-one per cent. Stephen Harper grew the size of the Prime Minister's Office by how much? Thirty per cent. In how many years?

Senator Mitchell: Two years?

Senator Dawson: You are right, senator, two years. The cost of the entire Conservative cabinet grew by 16 per cent over that same period. It is unbelievable. At a time when the government should be showing restraint, the Conservatives are setting the worst possible example.

[*Translation*]

The role of members, honourable senators. This leads me to my third point, the constant increase in the size of the House of Commons, which will dilute the influence of the average member in the House.

The increase in Mr. Harper's cabinet — at the risk of repeating myself, 30 per cent in two years — clearly demonstrates the degree of control of the "centre". . .

[*English*]

The centre is controlling the political process in Canada.

[*Translation*]

MPs have less and less influence over the government in a Parliament where closure motions that limit debate have become the norm and where any proposal to improve legislation is ignored.

[Senator Mitchell]

[*English*]

They do not take amendments. Bills are always well written.

[*Translation*]

Having encountered a great deal of resistance from the public, Mr. Harper's parliamentary secretary then boasted about their plan by stating "we will reduce MP's budgets."

Thus, if I have understood correctly, and please correct me if I am mistaken, first, more MPs are added to a Parliament that is tightly controlled, and then MPs are told that they will receive less money to do their work. Mr. Harper himself suggested further diminishing the political weight of members by cutting their budgets.

The purpose of the law should be to strengthen the role of MPs by giving them an equal voice in Parliament. Instead, their influence will be diluted.

[*English*]

Honourable senators, you must also consider how the government's proposal amounts to a permanent "growth formula" for the House of Commons, not just now but in the future. Everyone agrees on the need to redistribute seats more equitably between the provinces. It is not fair that in some Toronto ridings there are 150,000 Canadians to elect one MP, while in Manitoba, for the same number, you get two MPs, and probably not Liberal.

Representation by population is enshrined in our Constitution. This principle applies to everyone, regardless of what province they live in. That is why the current formula assigns each province a fair share of seats based on their share of Canada's population. That is the formula we are proposing — not 30 more parliamentarians.

A more equitable House of Commons can be achieved without increasing its size, without increasing cost and without watering down the influence of MPs. There are rules that we can change, like the senatorial clause, Senator Carignan. In the Constitution we cannot touch the section that guarantees four seats for Prince Edward Island. However, the grandfather clause, which was passed in 1985 and which prevents any province from losing seats, does guarantee continued growth in the House of Commons. Sharing with the other chamber, we have the power to change that rule.

The Conservative plan keeps this grandfather clause, ensuring that the house will continue to grow by leaps and bounds in some provinces and continue to grow faster than in others. If we apply the Conservative formula to Statistics Canada's mid-range population projections for each province, we will have 345 seats in 2021 and 353 in 2031. We will be reaching the same number as the House of Representatives.

I fail to see how we can physically put 45 more seats in the House of Commons. For those of you who sat in the other place, it is already a bit tight. How many more can you put on CPAC anyway?

[*Translation*]

Honourable senators, what kind of legacy would we be leaving to our future legislators if we saddled them with a formula that advocates continuous growth for the House of Commons?

The Liberal Party took a responsible approach to this problem. It is a question of a simple change: replace the grandfather clause, which guarantees an increase in the number of seats, with the 15 rule, which was used in the 1950s.

This rule prevents provinces from losing more than 15 per cent of their seats in any redistribution.

The result is a House of Commons that is closer to the desired fair representation, with 308 seats maintained in the other place, and only nine seats being redistributed.

The government claims that the Liberal plan creates winners and losers. But that is only a misconception, an illusion, honourable senators. Each province, including Quebec, would have the same proportion of seats under the Liberal plan as they would with the Conservative proposal, and this goes for current and future demographic projections.

[*English*]

In conclusion, honourable senators, I do not support a bill that accelerates the growth of the House of Commons in perpetuity, adds unnecessary costs and waters down the influence of MPs.

[*Translation*]

We can control costs while still strengthening our MPs' influence, and as a result, achieve representation that is fairer for all provinces, including Quebec, without increasing the number of members in the House of Commons.

However, I reiterate to the Leader of the Government in the Senate that we would be pleased to cooperate with the government, and if it proposes meeting in committee as soon as possible, I am sure that the senators on this side of the chamber would be pleased to oblige.

[*English*]

The Hon. the Speaker: Are honourable senators ready for the question?

It was moved by the Honourable Senator Carignan, seconded by the Honourable Senator Meighen, that Bill C-20 be read a second time.

Those in favour of the motion will please say "yea"?

Some Hon. Senators: Yea.

Some Hon. Senators: On division.

(Motion agreed to and bill read second time, on division.)

[*Translation*]

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

(On motion of Senator Carignan, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

[*English*]

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTINGS OF THE SENATE

Hon. John. D. Wallace: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

> That, until December 23, 2011, for the purposes of its consideration of Bill C-20, An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act, the Standing Senate Committee on Legal and Constitutional Affairs have power to sit even though the Senate may then be sitting, with the application of rule 95(4) being suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

• (2220)

[*Translation*]

THE SENATE

MOTION TO ESTABLISH NATIONAL SUICIDE PREVENTION STRATEGY—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Dawson, seconded by the Honourable Senator Day:
>
> That the Senate agree that suicide is more than a personal tragedy, but is also a serious public health issue and public policy priority; and, further, that the Senate urge the government to work cooperatively with the provinces, territories, representative organizations from First Nations, Inuit, and Métis people, and other stakeholders to establish and fund a National Suicide Prevention

Strategy, which among other measures would promote a comprehensive and evidence-driven approach to deal with this terrible loss of life.

Hon. Roméo Antonius Dallaire: Honourable senators, I was intending to speak to this motion, which deals with a critical issue and causes a tremendous amount of concern. However, given how late it is, it might be risky for me to talk about this topic. Accordingly, I am asking that the debate be postponed until the next sitting of the Senate.

(On motion of Senator Dallaire, debate adjourned.)

[*English*]

MOTION TO URGE GOVERNMENT TO HONOUR SECTION 47.1 OF THE CANADIAN WHEAT BOARD ACT—DEBATE ADJOURNED

Hon. Wilfred P. Moore, pursuant to notice of December 7, 2011, moved:

> That the Senate urge the Government of Canada to honour section 47.1 of the *Canadian Wheat Board Act* which provides that the Minister responsible for the Canadian Wheat Board shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless
>
> (*a*) the Minister has consulted with the board about the exclusion or extension; and
>
> (*b*) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister.

He said: Honourable senators, I rise this evening to speak to my motion, which was introduced on December 7. As honourable senators will know, I have spoken to this matter at second reading and in consideration of the question of privilege. It is truly regrettable that the actions of this government have caused me to stand in this chamber again and ask that we, as senators, exercise our duty of sober second thought and push the executive branch of our government to follow the rule of law in our country. That the actions of this government could cause such a situation to arise should be alarming to all law-abiding Canadians.

Senator Mitchell: It is.

Senator Moore: The government purports to be tough on crime and there is no such thing. If this government does not bother to follow laws that govern this nation, how can we, as Canadians, trust that the Prime Minister's cabinet will do what is right?

Senator Mitchell: Good question.

Senator Moore: Honourable senators, this is not the first instance of this government not following the rule of law of the land. There is a litany of such abuses of power.

In their last election campaign, Mr. Harper said, "I make the rules." I can assure you, honourable senators, that he does not make the rules. The Parliament, the two legislative bodies, the people of Canada and the Crown make the rules, and those rules are to be obeyed.

Some of the instances should be put on record here, because this is a tremendously disappointing pattern that has developed. You might recall Linda Keen. She followed the law. She would not betray the statute and the office that she so professionally served. This did not suit the government, so she was fired for breaking the law.

The Minister of Industry took funds from the Border Infrastructure Fund and divided it up in his constituency under the guise of the G8 summit. The Auditor General cited him as breaking the rules.

The Minister of Defence was cited twice by the Ethics Commissioner. The Minister of International Cooperation was held in contempt of Parliament. The Conservative Government of Canada was held in contempt of Parliament, the first government in the history of the Westminster style to be so judged. The Conservative Party of Canada pleaded guilty to breaking Election Canada rules.

All of this, as I mentioned earlier, makes us look like a banana republic, which leads us to today and my motion to compel this government to obey the law.

The Federal Court of Canada ruled last week on the validity of the government's methods in dismantling the Canadian Wheat Board, and I quote that decision in part:

> 1. The Minister failed to comply with the statutory duty pursuant to section 47.1 of the *Canadian Wheat Board Act*, RSC 1985, c C-24, to consult with the Board and to hold a Producer vote, prior to the causing to be introduced in Parliament Bill C-18, *An Act to reorganize the Canadian Wheat Board and to make consequential and related amendments to certain Acts* . . .

As a result of that Federal Court decision, the Minister of Agriculture has not merely been held in contempt by farmers for not keeping an election promise to hold a plebiscite for farmers regarding the future of the single desk, but now the Federal Court of Canada has cited the minister for not complying with his statutory duty, for not following the laws of Canada.

Senator Mitchell: Promise made, promise broken.

Senator Moore: Honourable senators, this has to be one of the darkest days in Canadian parliamentary history — a minister of the Crown does not follow the law of the land, even though he had publicly stated that he would do so.

Senator Mitchell: You cannot have it both ways.

Senator Moore: Our Constitution represents the rule of law and everyone is subject to it — citizens, members of Parliament, members of the cabinet, senators, even the Prime Minister.

Where is the voice for our farmers? Where is their freedom to speak about their future? Their freedom to speak is set out in the Canadian Wheat Board Act, which guarantees farmers their right to decide the future of the board. They deserve to be heard in a democratic vote, as promised by the act and also as promised by the minister himself.

Honourable senators, this is dealing with the Canadian Wheat Board Act. If a minister of the Crown can ignore a provision of that act, what about some other acts? What about the Clarity Act? I want my colleagues from Quebec to listen to this.

There are provisions of the Clarity Act as to whether or not a question is clear, whether or not the result of a question clearly put is clear, and also whether or not the government has the right to negotiate a matter of separation with any province.

By doing what is happening here, there is no reason why a minister of the Crown cannot ignore those statutes or those provisions of that particular statute. By prime ministerial fiat, we see the Clarity Act gutted.

If that is not enough, honourable senators, what about the act respecting constitutional amendments, the so-called Regional Veto Act? It is same thing there, which requires certain provinces, including Quebec, to have the right of veto for the Constitution to be amended.

• (2230)

What about that? What if the minister said we are going to ignore one of those provisions? That can happen. On the basis of this precedent we are seeing with regard to the Canadian Wheat Board Act, that can happen. That statute, too, would be gutted.

Some Hon. Senators: No.

Senator Moore: Do not say "no." You are setting the precedent, and I urge you not to.

I spoke to this before. I want to remind my colleagues opposite of their oath of office:

> I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors.
>
> So help me God.

This oath is without conditions. It does not say, "So help me God, and I may breach the oath as is convenient to me." It does not say that, if the honourable senator wants to take that lightly.

What I am saying here, honourable senators, is I do not want my colleagues opposite to shy away from their oath and responsibilities. I think they should remember, in all these situations, that integrity triumphs everything.

We are not just politicians here, honourable senators; we are trustees of the rule of law. It is precisely this kind of irrational abuse by the elected house that our chamber was intended to prevent. This is exactly what the Fathers of Confederation had in mind when they designed the Senate. We are truly the champions of the minorities. It is for us to stand for those who are without a voice.

In this situation it is the farmers who are not given an opportunity to exercise their voice. It is more than that, given the refusal to date of the minister not to follow the law. We are the champions and defenders of the Constitution for all Canadians, and that is important. I mentioned that the other day in my remarks with regard to the question of privilege dealing with this matter.

I suggest to all that we would be sorrowfully letting down the very Canadians we were put in this place to protect. I seriously urge all honourable senators, including those opposite, to open their hearts and do the right thing. I know we can do better than the other place. I ask honourable senators to support this motion.

Hon. Terry M. Mercer: I move the adjournment of the debate. If Senator Plett would like to hear my 45 minutes or half an hour, I can give it to him right now. I am ready.

(On motion of Senator Mercer, debate adjourned.)

(The Senate adjourned until Wednesday, December 14, 2011, at 1:30 p.m.)

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